



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



L. Eng. A. 23. e. 29

CW.U.K:

X 585

I 38 c 3

A
MANUAL OF THE PRACTICE
OF THE
SUPREME COURT OF JUDICATURE.

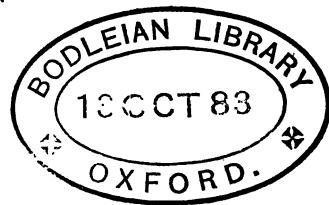
Ballantyne Press
BALLANTYNE, HANSON AND CO., EDINBURGH
CHANDOS STREET, LONDON

A
MANUAL OF THE PRACTICE
OF THE
SUPREME COURT OF JUDICATURE
IN THE
Queen's Bench and Chancery Divisions.

INTENDED CHIEFLY FOR THE USE OF STUDENTS.

THIRD EDITION
(Embodying all alterations effected by the Rules of 1883).

BY
JOHN INDERMAUR,
SOLICITOR;
(FIRST PRIZEMAN, MICH. TERM, 1872; AUTHOR OF "PRINCIPLES OF THE COMMON
LAW," "A CONCISE TREATISE ON BILLS OF SALE," "EPITOMES OF
LEADING CASES," ETC. ETC.



LONDON:
STEVENS AND HAYNES,
Law Publishers,
BELL YARD, TEMPLE BAR.
1883.

PREFACE

TO

THE THIRD EDITION.

IF a new edition of this work was appropriate when the second was published, how much more so must it be now, when we have in so many respects a new Practice presented to us by the Rules of 1883! It has been no light labour to go carefully through these New Rules and digest them, and prepare this edition, which has in a great many parts been necessarily a rewriting of the work, and it may be said that there was scarcely a page in which alteration was not necessary. I hope I have succeeded in presenting my readers with a correct and reliable manual of the new Practice as it will be on and after the 24th of October next, and I think it will be found that little if anything has been omitted which ought to have found a place in the work. I have striven to keep down the size, but with all that it has been necessary to somewhat enlarge it; but this cannot be considered a disadvantage, as I am sure the book by reason of it will be found a far more complete one than either of the prior editions.

If time shall show any errors in my work through misconception of some of the new provisions, I think I may ask for them to be dealt with tenderly, bearing in mind that I am the first to endeavour to make the path of the new Practice smooth to the student.

But not only by the student, in the ordinary acceptance of the word, do I trust that my book will be read. The whole profession must be students of the new Practice, and if practitioners will only deign to believe that they can reap a benefit from the perusal of such a small work as this, I have a confident hope that they will find that they have acquired from its pages a good knowledge of the new procedure, and that they will find it acceptable for after use to turn to on any points arising in daily practice. With this idea specially in view, I have bestowed great pains on the Index.

The text of the book was in type before the new Bankruptcy Act (46 & 47 Vict. c. 52), appeared, hence the provisions of sects. 92, 93, and 94 are not referred to as they strictly should have been on p. 14, in dealing with the jurisdiction of the High Court. The student will observe that the London Bankruptcy Court is by this Act united with the Supreme Court of Judicature, the jurisdiction of the London Bankruptcy Court is transferred to the High Court, and Bankruptcy matters are to be assigned to such Division of the High Court as the Lord Chancellor may from time to time direct. Bankruptcy, however, will of course remain a separate Practice, and calls for no further remark in this work.

J. I.

22, CHANCERY LANE, W.C.
September, 1883.

PREFACE

TO

THE SECOND EDITION.

A SECOND EDITION of this Practice having been called for, I have gone through the work with great care, and have found, firstly, that there were some things omitted originally ; and secondly, that in the three years which have elapsed since the publication of the first edition much has occurred in the shape of Acts, Rules, and Cases to render necessary very material alterations throughout. My work has to some extent been rendered easier by a practical observance, in reading with my pupils, of various points and alterations, and also by being myself actively engaged in my profession, and having particular matters of practice therein from time to time drawn to my attention. The various new Rules, and particularly those of April, 1880, had rendered the former edition unsatisfactory, and though I had endeavoured to rectify the imperfections which necessarily arose, by publishing and having bound up with the work some observations on those Rules, yet I am glad a new edition has now become

necessary, that I may present the work to my readers in a whole and complete state down to the present time.

A new edition of any work on Practice is at the present time also very appropriate, by reason of the recent Order in Council uniting the Queen's Bench, Common Pleas, and Exchequer Divisions into one, called the Queen's Bench Division, and abolishing the time-honoured offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron of the Exchequer. This was an alteration demanded by common sense, and which could only have been withstood by conservatism of a character that does not now very largely exist. In the House of Commons, the mover of an address against the Order in Council effecting the change, spoke eloquently on the fading away of our ancient institutions,—but of what avail in this age of utilitarianism? The Student will find that all alterations necessary on account of this Order have been embodied in the text.

Though amplifying the work in various places, and adding one additional chapter (on Arbitration), and also giving some Forms in the Appendix which were not in the former edition, I have not forgotten what I originally aimed at, that is, avoiding unnecessary details and stating the matter in as short a form as it conveniently could be put; and the Student,—although the book contains 233 pages as against 173 in the first edition,—will not have much to complain of in the size

of it. Its success as a book for Students is amply shewn by reference to past examinations.

Beyond Students, I hope and expect that this work will prove of use to practitioners, as being a handy volume from which matters arising in practice can be quickly found, and enabling the practitioner to at once turn to the point in the particular Act, Rule, or Order. With this view I have taken particular pains in revising and enlarging the Index.

J. I.

22, CHANCERY LANE, W.C.
June, 1881.

PREFACE

TO

THE FIRST EDITION.

IN September, 1875, I published a guide to the Supreme Court of Judicature Acts, 1873 and 1875, in the shape of Questions and Answers, considering that, at that time, the most useful way of bringing the subject of the new practice before the Student. Over two years having elapsed since the Judicature Acts came into operation, and the practice having become somewhat settled, it may be now advantageously considered as a whole, and not simply with reference to the alterations made by the Acts.

My object in writing the present work has been to give to the Student, as shortly and simply as possible, such an elementary view of the proceedings in the Queen's Bench, Common Pleas, Exchequer, and Chancery Divisions of the High Court of Justice as will enable him to satisfactorily pass any reasonable examination on the subject. I have specially aimed at avoiding details which have appeared to me unnecessary or beyond the scope of the book, and also at

putting the subject-matter in as short form as is consistent with a proper explanation. If in any points it should be that I have been too brief, the references given throughout will furnish the means of acquiring further information or explanation.

If my object has been successfully attained, I think I shall have supplied a great want which at the present time exists, especially amongst Students for the Final Examination of the Incorporated Law Society.

I have to thank my friend and former pupil Mr. T. EUSTACE SMITH for his assistance in preparing the Index.

J. I.

22, CHANCERY LANE, W.C.

March, 1878.

TABLE OF CONTENTS.



PART I.

OF THE COURTS, THE JUDGES AND THE OFFICERS THEREOF; AND OF PARTIES TO ACTIONS AND JOINDER OF CAUSES OF ACTION.

CHAP.	PAGE
I. THE FORMER COURTS AND THE PRACTICE THEREIN .	1
II. THE PRESENT COURTS	12
III. PARTIES TO ACTIONS AND JOINDER OF CAUSES OF ACTION	34

PART II.

OF THE PRACTICE AS SPECIALLY OCCURRING IN THE QUEEN'S BENCH DIVISION.

I. PROCEEDINGS TO APPEARANCE	45
II. JUDGMENT IN DEFAULT OF APPEARANCE, AND APPLI- CATIONS UNDER ORDER XIV.	59
III. PROCEEDINGS FROM APPEARANCE TO THE CLOSE OF THE PLEADINGS	66
IV. INTERLOCUTORY PROCEEDINGS	85
V. TRIAL AND PROCEEDINGS TO CONCLUSION	115
VI. ARBITRATION	150

PART III.

OF THE PRACTICE AS SPECIALLY OCCURRING
IN THE CHANCERY DIVISION.

CHAP.	PAGE
INTRODUCTORY	159
I. PROCEEDINGS TO THE FIRST HEARING AND JUDGMENT	160
II. PROCEEDINGS IN CHAMBERS UNDER THE JUDGMENT .	171
III. INTERLOCUTORY PROCEEDINGS	183
IV. PROCEEDINGS TO CONCLUSION	198
V. CERTAIN SPECIAL PROCEEDINGS	206

PART IV.

OF APPEAL.

I. APPEALS TO HER MAJESTY'S COURT OF APPEAL .	227
II. APPEALS TO THE HOUSE OF LORDS	235
III. APPEALS FROM INFERIOR COURTS	238

APPENDIX.

I. TIME TABLE	241
II. FORMS	248

INDEX	265
-----------------	-----

INDEX TO CASES CITED.

	PAGE
Appleyard <i>v.</i> Judkins	238
Bains <i>v.</i> Bromley	145
Benson <i>v.</i> Paull	10
Blake <i>v.</i> Appleyard	146
Brazil, Emperor of, <i>v.</i> Robinson	105
Browning <i>v.</i> Sabin	201
Cremetti <i>v.</i> Crom	136
Cruikshank <i>v.</i> Floating Swimming Bath	151
Danford <i>v.</i> McAnulty	84
Dicks <i>v.</i> Yates	146
Drover <i>v.</i> Beyer	103, 194
Fisher <i>v.</i> Val de Travers Paving Co.	231
Garnett <i>v.</i> Bradley	144
Gardiner <i>v.</i> Harris	106
Gay <i>v.</i> Labouchere	95
Gordon <i>v.</i> Jennings	137
Harnett <i>v.</i> Vise	146
Harris <i>v.</i> Petherick	146
Hamburger <i>v.</i> Betting	106
Hastie <i>v.</i> Hastie	230
Johnson <i>v.</i> Wilson	101
Lumsden <i>v.</i> Winter	78
Marsden <i>v.</i> Lancashire and Yorkshire Railway Company	146
Mason <i>v.</i> Brentini	146
Otho, King of Greece <i>v.</i> Wright	105

	PAGE
Paraire <i>v.</i> Loibl	91
Rhodes <i>v.</i> Barrett, <i>Ex parte</i> Singleton	196
Rotherham <i>v.</i> Priest	65
Rouse, <i>In re</i>	153
Saner <i>v.</i> Billon	146
Solicitor, <i>In re</i> a	201
Stooke <i>v.</i> Taylor	145
Toke <i>v.</i> Andrews	80
Warner <i>v.</i> Murdock	163

A

MANUAL OF THE PRACTICE

OF THE

SUPREME COURT OF JUDICATURE.

PART I.

OF THE COURTS, THE JUDGES AND OFFICERS
THEREOF; AND OF PARTIES TO ACTIONS AND
JOINDER OF CAUSES OF ACTION.

CHAPTER I.

THE FORMER COURTS AND THE PRACTICE THEREIN.

THE Supreme Court of Judicature Acts of 1873 (*a*) and 1875 (*b*), together with the new Rules of 1883 thereunder, although to a great extent constituting in themselves a new practice, yet require at the outset for their proper understanding some slight explanation of the former Courts, and the practice therein, especially as, where no provision is made on the subject, the jurisdiction of the Courts is to be exercised as nearly as can be in the same manner as formerly (*c*), and the former procedure and practice remain in force. All, however, that is sought in the present chapter is to give the student some information purely general in its nature.

(*a*) 36 & 37 Vict. c. 66.

(*b*) 38 & 39 Vict. c. 77.

(*c*) Jud. Act. 1873, s. 23; Order LXXII. r. 2.

The Courts of
Common Law. The Courts of Common Law were older in their origin than the Court of Chancery, being, indeed, the outcome of a very ancient body called the *Aula Regis*.

Aula Regis. In this Court the Sovereign was Judge, and the Court followed the Sovereign wherever he went over the country; the inconvenience of this was found to be so great that it was enacted by Magna Charta that "Common Pleas" should no longer follow the King's person, but be held in some fixed place. In consequence of this enactment the Court of Common Pleas (so called in contradistinction to Crown Pleas) was established at Westminster, and all ordinary civil matters were determined there. Later in Edward the First's reign the Court of Exchequer was carved out of the *Aula Regis* for the determination and management of Revenue matters, and the remnant of the *Aula Regis* was styled the King's Bench, and continued, as the old *Aula Regis* had done, to possess a criminal jurisdiction and also a superintending power over the inferior tribunals in the kingdom. By certain fictions which it appears unnecessary now to explain, the Court of Exchequer and the Court of King's Bench acquired a civil jurisdiction as well as the Court of Common Pleas.

The Common Law Courts became, therefore, three in number, viz., the Court of King's or Queen's Bench, the Court of Common Pleas, and the Court of Exchequer. At the time the Judicature Acts came into operation, actions were brought in common in any one of these Courts as the litigant chose, but each had also some exclusive jurisdiction; particularly the Court of Queen's Bench had an exclusive power over inferior jurisdictions, and also a general criminal jurisdiction; the Court of Common Pleas had an exclusive jurisdiction in actions relating to dower, and by 6 Vict. c. 18, s. 60, in appeals from decisions of revising barristers as to registration of electors; and the Court of Exchequer had an exclusive jurisdiction in Revenue matters.

At the time the Judicature Acts came into operation the Courts of Common Law comprised fifteen Judges, viz., the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and twelve puisne Judges, or Judges of less degree. Appeals lay, in the first instance, to a Court known as the Exchequer Chamber, and from thence to the House of Lords.

Former Judges
at Common
Law.

The Court of Chancery arose from the defects of these Courts of Common Law. For every right there was supposed to exist at Common Law a certain proper form of writ, but in respect of some matters for which clearly relief ought to have been given no form of writ was found, and the practice therefore grew up of applying to the Sovereign in person, asking him as a matter of favour to give the required remedy. The Sovereign generally deputed such applications to his Lord Chancellor, and therefore gradually the practice grew up of applying direct to the Chancellor, who thus in himself originally constituted the Court of Chancery (*d*).

The Court of
Chancery.

At the time of the coming into operation of the Judicature Acts the Court of Chancery comprised seven Judges, viz., the Lord Chancellor and two Lords Justices constituting—either sitting together or separately—a Court of Appeal, and the Master of the Rolls and three Vice-Chancellors. The Lord Chancellor, as before explained, was the first Judge in Chancery; the Master of the Rolls was originally merely a master in Chancery to whom certain matters were referred, and by a gradual development his position assumed that of an independent Judge, being finally settled by statute; the three Vice-Chancellors were appointed respectively in 1811 and 1842, and the Lords Justices in 1851. On account of his more

Former Judges
in Chancery.

(*d*) See Haynes' Outlines of Eq. 5th ed. 13.

ancient origin the Master of the Rolls ranked next to the Lord Chancellor in order of precedence. The ultimate Court of Appeal was, as at Common Law, the House of Lords.

Difference in relief at Law and in Equity.

The Courts of Law were governed by strict rules, but it was different with the Court of Chancery in its first origin. There originally justice was measured out according to the conscience of each particular Chancellor; but in course of time this ceased to be the case. Equity was modelled from time to time by various Judges, and legislative enactments, so that at the time of the Judicature Acts Courts of Equity were as much bound by legislative enactments and precedent decisions as were the Courts of Law.

Inconvenience of the two distinct systems of Law and Equity.

These two different systems of Law and Equity had therefore their origin naturally enough, but however satisfactory in explanation was their separate existence, it could hardly be said to be so in practice, for in some cases a litigant ran the risk of applying for relief to the wrong Court, and thus failing, having to bear the cost of his proceedings and commence over again in the other Court; in others matters the one Court could give a partial relief, and for complete relief the assistance of the other had also to be obtained, and there was besides a wide difference in the practice.

It will now be best to give shortly an outline of the former practice in the Courts of Common Law and the Court of Chancery respectively, so that the student may be able to compare some points of the old with the new practice given throughout this work, and thus see with greater force the nature and effect of the alterations.

**Former Common Law practice.
Writ.**

The first step in an ordinary Common Law action was a writ of summons, being in its main particulars the same as a writ of summons under the present

practice (g). This was served on the defendant, and on his failing to appear thereto within eight days judgment was signed, much the same as under the present practice. If he appeared the pleadings then commenced.

The first pleading in the action was a declaration, Declaration. being a written statement of the plaintiff's case, couched in many particulars in technical language, and frequently in its technicalities involving considerable repetition and running on to considerable length. This was delivered to the defendant's solicitor—or attorney, as he was called at law—with a notice indorsed thereon requiring him to plead thereto within eight days.

The next step was a plea by the defendant, being a Plea. written statement of his case, and, like a declaration, often very lengthy and very technical.

The plaintiff then delivered a replication, which was Replication. usually simply a joinder of issue, viz., a direct denial of the points urged by the defendant, and if this were so the pleadings were then ended, for the great object of pleadings was, and indeed still is, to arrive at a direct point in issue between the plaintiff and defendant. Sometimes, however, a direct issue could not be then arrived at, and it became necessary to have subsequent pleadings to attain that object, and these were called the rejoinder, the surrejoinder, the Rejoinder, rebutter, the surrebutter, and if it were necessary to surrejoinder, rebutter, and continue the pleadings after this they had no surrebutter. distinctive names. However, for them to go as far as this did not often occur; they usually terminated with the replication.

Issue having been joined, the next step was notice Notice of of trial by the plaintiff. trial.

(g) As to which, see post, p. 45.

Verdict, judgment, and execution.

The cause then came on to be heard in due course, the evidence at the trial being *vivâ voce*, and then followed verdict, judgment, and execution.

Former Chancery practice. Bill of complaint.

The first step in an ordinary Chancery suit was a bill of complaint, which was a printed (*h*) document containing a full and detailed statement of the plaintiff's case. This having been filed a sealed copy was served on the defendant, and he appeared thereto within eight days.

Interrogatories.

An almost invariable practice was then for the plaintiff to file interrogatories, being substantially the bill of complaint put into the form of questions. To these interrogatories the defendant was bound to put in an answer which practically contained his defence.

Answer.

If the plaintiff did not deliver interrogatories it was open to the defendant to put in a voluntary answer, which was practically a voluntary defence. The bill and answer (if any), or if none, the bill alone thus formed the pleadings in a Chancery suit.

Notice of motion for decree.

The most usual course (*i*) then to bring the cause to a hearing was for the plaintiff to give to the defendant notice of motion for decree, which was a notice that he intended to apply to the Court to give him the relief he considered himself entitled to. The evidence was not *vivâ voce*, as at Common Law, but by affidavits, the plaintiff first filing his affidavits in support, then the defendant his in answer thereto, and finally the plaintiff filing any further affidavits in reply on any new points appearing from the defendant's evidence. The cause was then set down and in due course came on to be heard.

Difference in the nature of

One of the great differences under the old system—and one which will hereafter be touched on under the

(*h*) In some few cases where expedition was required a written bill could be filed, but a printed copy had to be filed afterwards within fourteen days.

(*i*) It is unnecessary to refer to the other courses.

present practice—was the difference in the kind of case that usually came before the Court of Chancery and the Courts of Law. In a Court of Law the plaintiff almost invariably only sued to recover a sum of money, and on the hearing of the cause the whole matter could be disposed of by the verdict of the jury and the judgment founded thereon. But in Chancery this was usually different; there the plaintiff was frequently proceeding in respect of matters of intricacy, and in almost all cases in matters which involved more than could be settled in open Court. For instance, in an administration suit, it would have been impossible for the whole matter at once to have been disposed of in open Court. It was necessarily impossible for the Court to then and there find out what the estate consisted of, what were the debts, who were the parties interested, and so on. So again, take a suit for dissolution of a partnership, and for the partnership accounts to be taken, how could the Court dispose of this at once? It was manifestly impossible. And this was so in the great majority of cases. This should be well noticed by the student, for though dwelt upon here primarily as explaining the former practice, it also explains the present; for there still exists a distinction between the majority of cases coming before the Chancery Division on the one hand, and the Queen's Bench Division on the other hand, as will be hereafter seen.

At the hearing of the cause then, the Court, being unable to dispose of the whole matter at that time, made a decree directing certain accounts and inquiries to be taken and made. Thus in an administration suit, amongst others, an account of the testator's personal estate, an account of his debts, an inquiry as to the persons beneficially interested, &c.; or in a partnership suit, an account of the partnership assets, of the proportion in which each was entitled, &c. The decree

Chief Clerk's
certificate.

Order on
further con-
sideration.

was then, after having been drawn up (*l*), carried into Chambers and worked out before the Judge's Chief Clerk (*m*), who finally made his certificate of the result of the accounts and inquiries referred to him. Then on this certificate the cause came before the Court again on what was called a hearing on further consideration, when the Court made its final decree, called an order on further consideration. This order usually brought the suit to a conclusion.

Summary.

The following statement, in columns, contrasts at a glance the most usual points in the Common Law and Chancery procedure respectively :—

Common Law.

Chancery.

Writ of summons by plaintiff
and service thereof.

Bill of complaint by plaintiff
and service thereof.

Appearance by defendant.

Appearance by defendant.

Declaration by plaintiff.

Plea by defendant.

Replication by plaintiff.

(Occasionally subsequent pro-
ceedings, being rejoinder by
defendant, surrejoinder by
plaintiff, rebutter by defend-
ant, surrebutter by plain-
tiff, &c.)

Answer by defendant founded
on interrogatories adminis-
tered by plaintiff. If no in-
terrogatories administered,
no answer necessary; but a
voluntary answer optional.

Notice of trial by plaintiff.

(Notice of motion for decree by
plaintiff, followed by affi-
davits by plaintiff, then by
defendant in answer, and
then by plaintiff in reply.

Entry of cause for trial.

Entry of cause for trial.

Cause heard by Judge and
jury, verdict, judgment, and
execution.

Cause heard by Judge, and
decree made directing ac-
counts and inquiries to be
taken and made.

Decree carried into Chambers,

(*l*) As to the drawing up, which is the same now, see post, p. 168.

(*m*) See post, pp. 24-26.

*Common Law.**Chancery.*

and summons taken out to proceed thereon.
 Evidence brought in before Chief Clerk on accounts and inquiries.
 Chief Clerk's certificate.
 Cause set down for hearing on further consideration.
 Hearing on further consideration, when final decree made disposing of the whole matter. (In many cases, however, the matter could not be finally disposed of even then, *e.g.*, if there were infants wards of Court, and then liberty was given to apply to Court at any time, and further consideration reserved.)

The foregoing is of course but an outline of the most usual former proceedings. The student must not imagine that the various things he reads of in the subsequent pages are necessarily new, as many of them are similar to the old practice. To detail further the former procedure would, in the Author's opinion, tend to lead the student into confusion.

The Judicature Acts are not the first steps that have been taken for the fusion of the two systems of Law and Equity. From time to time Acts have been passed giving to the Courts of Law certain powers before only exercised by Courts of Equity, and to the Court of Equity powers before only exercised by the Court of Law. The chief of these steps towards fusion may be here shortly noticed :—

1. *Common Law Powers given to the Courts of Equity.*

By 14 & 15 Vict. c. 88, s. 8, they were enabled to obtain the assistance of a Common Law Judge instead

Steps towards fusion prior to the Judicature Acts.

of sending cases for the opinion of a Common Law Court.

By 21 & 22 Vict. c. 27, they might award damages either in addition to or in substitution for injunctions or specific performance.

By 25 & 26 Vict. c. 42, they might try questions of fact with or without a jury.

2. *Equity Powers given to the Courts of Common Law.*

By the Common Law Procedure Act, 1852 (*n*), they were enabled to grant relief in actions for non-payment of rent or mortgage money (*o*).

By the Common Law Procedure Act, 1854 (*p*), they might grant injunctions against the continuance of any injury (*q*), specific performance in certain limited cases (*r*), give discovery (*s*), and allow equitable defences to be set up (*t*).

By the same Act (*u*) they might order the specific delivery up of chattels wrongfully detained instead of giving defendant the option of retaining them on paying their value; and by the Mercantile Law Amendment Act, 1856 (*x*), they might do the same in actions for breach of contract to deliver goods.

By the Common Law Procedure Act, 1860 (*y*), they might grant relief against forfeiture of a lease for non-insurance (*z*).

(*n*) 15 & 16 Vict. c. 76.

(*o*) Sect. 212.

(*p*) 17 & 18 Vict. c. 125.

(*q*) Sect. 79.

(*r*) Sect. 68, and see as to construction put on it, *Benson v. Paull*, 27 L. T. Rep. 78.

(*s*) Sect. 51.

(*t*) Sect. 83.

(*u*) Sect. 78.

(*x*) 19 & 20 Vict. c. 97, s. 2.

(*y*) 23 & 24 Vict. c. 126.

(*z*) Sect. 2.

And now the final step towards fusion has been taken by the Judicature Act, 1873, the object of that Act being to do away with separate Courts for different matters, and also the anomaly of the existence of two distinct tribunals, and to assimilate the whole practice as much as possible. The constitution of the Courts under that Act and the Judicature Act of 1875 and the Rules of Court will be found detailed in the next chapter.

CHAPTER II.

THE PRESENT COURTS.

The Supreme
Court of
Judicature.

By the Judicature Act, 1873, the former Courts, viz., (1) the Court of Chancery, (2) the Court of Queen's Bench, (3) the Court of Common Pleas, (4) the Court of Exchequer, (5) the Court of Admiralty, (6) the Court of Probate, and (7) the Divorce Court (*a*), are united and consolidated into one Court called the "Supreme Court of Judicature," which is divided out into two permanent divisions, viz., "Her Majesty's High Court of Justice" for original jurisdiction and certain appellate jurisdiction from inferior Courts, and "Her Majesty's Court of Appeal" for appellate jurisdiction (*b*). The two Judicature Acts came into operation on the 1st of November, 1875 (*c*).

It is necessary that before proceeding to the present actual practice of the Courts, the student should have some idea of their constitution, and also of the Judges or officers who preside in them or assist in carrying out the details of practice.

Constitution of
the High Court
of Justice.

To deal firstly with the High Court of Justice. There were until lately five divisions in this Court, corresponding with the previous Courts, which, as just stated, are united and consolidated into one, viz. (1) the Chancery Division, (2) the Queen's Bench Division, (3) the Common Pleas Division, (4) the Exchequer

(*a*) No reference to the origin of or practice in these three last-mentioned Courts is made in this work, as being beyond it.

(*b*) Jud. Act, 1873, ss. 3 and 4; Jud. Act, 1875, s. 9.

(*c*) Except as to House of Lords, as to which see post, p. 32.

Division, and (5) the Probate, Divorce, and Admiralty Division (*d*). The previous Judges of the different Courts are Judges of the High Court (*e*), and generally until lately sat in Divisions synonymous with the previous Courts; but this did not prevent any Judge from sitting when required in any Divisional Court, and any Judge might be transferred from one Division to another by Her Majesty under her royal sign manual (*f*). The Judge who was chief of any formerly existing Court was until lately president of the analogous Division, viz., of (1) the Lord Chancellor; (2) the Lord Chief Justice of England; (3) the Lord Chief Justice of the Court of Common Pleas; (4) the Lord Chief Baron of the Exchequer, and of (5) the originally existing Judge of the Court of Probate was made president, but subject thereto the senior Judge of such Division (*g*). When any vacant judgeships occur new Judges may be appointed by letters patent (*h*). The Judges (other than the Lord Chancellor) hold their offices for life subject to a power of removal by Her Majesty on an address presented by both houses of Parliament (*i*). The Judges.

By an Order in Council dated 16th December, 1880, and which was issued on 6th January, 1881, and came into operation on 26th February, 1881 (*k*), it has been ordered that the number of the Divisions of Her Majesty's High Court of Justice be reduced by the consolidation and union of all the Judges then attached respectively to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division, in one Division called "The Queen's Bench Division," under the presidency of the Lord Chief Justice of England, Order in Council.

(*d*) Jud. Act, 1873, s. 31.

(*e*) Ibid. s. 5.

(*f*) Ibid. s. 31.

(*g*) Ibid.

(*h*) Jud. Act, 1873, s. 5.

(*i*) Jud. Act, 1875, s. 5.

(*k*) Made by the authority of sect. 32 of the Jud. Act, 1873.

and that the offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron of the Exchequer, being then vacant, should be reduced to an equality with the offices of the other Judges of Her Majesty's High Court of Justice who are not *ex officio* Judges of Her Majesty's Court of Appeal, by the abolition of the said titles and all ranks and dignities relating thereto. By force of this Order the Divisions above mentioned and numbered 2, 3, and 4 respectively, now constitute one Division, viz., "The Queen's Bench Division," which may for practical purposes be well styled the Common Law Division as opposed to that numbered 1, viz., the Chancery Division.

Jurisdiction
vested in the
High Court.

As these formerly existing Courts are consolidated into one, it follows that the High Court of Justice should have vested in it all their original jurisdiction, which is, indeed, specially provided; and it has also vested in it the jurisdiction of the Court of Common Pleas at Lancaster, the Court of Pleas at Durham, and the Court created by Commissions of Assize, Oyer and Terminer, and of Gaol Delivery, and this is to include the jurisdiction vested in the Judges of the said Courts sitting in Court or Chambers, or elsewhere, in pursuance of any statute, law, or custom (*l*). But it is specially provided that there shall *not* be transferred to the said Court the jurisdiction of the Court of Appeal in Chancery, or of the same Court in Bankruptcy, the jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster, the lunacy jurisdiction formerly vested in the Lord Chancellor and Lords Justices, the jurisdiction vested in the Lord Chancellor in relation to grants of letters patent, or as visitor of any college, and any jurisdiction of the Master of the Rolls in relation to records (*m*).

(*l*) Jud. Act, 1873, s. 16, amended by Jud. Act, 1875, s. 9.

(*m*) Jud. Act, 1873, s. 17.

With regard to the distribution of business amongst the different Divisions of the Court, generally the same matters as would have before been within the exclusive and peculiar jurisdiction of each different Court (*n*), are now within the exclusive and peculiar jurisdiction of the corresponding Division. Particularly the following matters are assigned to the Chancery Division of the Court :—

Distribution of business amongst the different Divisions.

Matters within the exclusive jurisdiction of the Chancery Division.

- (1.) All causes and matters pending in the Court of Chancery at the commencement of the Act.
- (2.) All causes and matters to be commenced after the commencement of the Act under any Act of Parliament by which exclusive jurisdiction in respect of such causes or matters has been given to the Court of Chancery or to any Judges or Judge thereof respectively, except appeals from County Courts.
- (3.) All causes and matters for any of the following purposes :
 - The administration of the estates of deceased persons ;
 - The dissolution of partnerships or the taking of partnership or other accounts ;
 - The redemption or foreclosure of mortgages ;
 - The raising of portions or other charges on land ;
 - The sale and distribution of the proceeds of property subject to any lien or charge ;
 - The execution of trusts, charitable or private ;
 - The rectification or setting aside or cancellation of deeds or other written instruments ;

(*n*) See *ante*, pp. 6, 7.

The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases;
 The partition or sale of real estate;
 The wardship of infants and the care of infants' estates (*o*).

Primarily the plaintiff is allowed an absolute choice of which Division he will commence his action in, but if he commence it in a Division to which it should not have been assigned, the Court may, on summary application, transfer it to the proper Division, or retain the same in the Division in which it is commenced; and an action must not be commenced in the Probate, Divorce, and Admiralty Division unless formerly it would have been commenced in one of those Courts (*p*).

Transferring
 action to another
 Division.

There is also full discretionary power of transfer of any cause or matter from one Division to another, by order of the Lord Chancellor, or of the Court, or any Judge of the Division to which the same is assigned, provided that no transfer can be made without the consent of the President of the Division to which the cause or matter is proposed to be transferred (*q*).

Order in
 Council.

By the Order in Council already referred to (*r*) it was ordered that all causes and matters then pending in any of the three divisions so united and consolidated, as before stated, should be transferred to the Queen's Bench Division to be so formed as aforesaid, and that all proceedings of every kind which might be then pending in any such causes or matters should be continued, carried on, and completed in the Queen's Bench Division to be so formed as aforesaid, in the same manner in all respects as they would have been

(*o*) Jud. Act, 1873, s. 34.

(*p*) Jud. Act, 1875, s. 11.

(*q*) Order XLIX. rr. 1, 3.

(*r*) Ante, pp. 13, 14.

in the Division to which they were previously assigned if the same had not been united or consolidated with such other two Divisions as aforesaid; that all causes, matters, and other proceedings, which by or under the Supreme Court of Judicature Act, 1873, or any Act amending the same, or any rule or order made pursuant thereto, have been or are assigned to the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division respectively, should in future be assigned to the Queen's Bench Division, to be formed by such consolidation and union as aforesaid; that all proceedings which have heretofore, by any law or custom other than such Acts of Parliament, rules, and orders as aforesaid, been taken or had respectively in the Queen's Bench Division, the Common Pleas Division, and the Exchequer Division of the said High Court of Justice, should be in future taken and had in the Queen's Bench Division, to be so formed by such consolidation and union as aforesaid; and that all powers and authorities which by any law or custom have heretofore been exercised by the Chief Justice of the Common Pleas and the Chief Baron of the Exchequer respectively, should in future be capable of being exercised by the Lord Chief Justice of England, unless such exercise thereof shall be contrary or repugnant to any express provision in any Act of Parliament contained.

To facilitate the prosecution in country districts of certain proceedings in an action, provision has been made for the establishment throughout the country of District Registries (s), where actions may be commenced and continued down to and including final judgment (t). Where an action proceeds in a District Registry the District Registrar may exercise all such authority and jurisdiction in respect of the action as

(s) Jud. Act, 1873, s. 60, amended by Jud. Act, 1875, s. 13.

(t) As to the practice in district registries see Order xxxv. When an action may be removed from district registries, see post, pp. 103, 104.

may be exercised by a Judge in Chambers, except such as a Master of the Supreme Court is precluded from exercising (*u*) ; and particularly he may grant leave to enter judgments under Order XVI., Rules 50, 51 (*x*), issue or renew writs of execution, examine judgment debtors for garnishee purposes, grant garnishee orders, and grant charging orders (*y*). Causes for trial at the assizes may also be entered with the District Registrar for trial (*z*), and where an action proceeds in a District Registry all proceedings relating to the following matters, namely, (*a*) leave to enter judgments under Order XVI., Rules 50, 51, (*b*) leave to issue or renew writs of execution, (*c*) examination of judgment debtors for garnishee purpose, (*d*) garnishee orders, and (*e*) charging orders *nisi*, shall, unless the Court or a Judge otherwise order, be taken in the District Registry (*a*).

When a writ issues in a District Registry and the plaintiff is entitled to sign judgment by default, either final or interlocutory, or where an action is proceeding in a District Registry and the plaintiff is entitled to sign judgment by default, either final or interlocutory, the same is signed in the District Registry (*b*). Also where judgment is signed in a District Registry, taxation of costs, the issuing of writs of execution and the issuing of summonses under the Debtors Act, 1869, all take place there (*c*).

Appeals from
District
Registrar.

If any matter appears to a District Registrar proper for the decision of a Judge the Registrar may refer the same to him, and any party dissatisfied with a District Registrar's decision may appeal to a Judge, and this notwithstanding that the matter was one in respect of which the District Registrar had jurisdiction only by

(*u*) Order XXXV. r. 6. As to which see post, p. 23, note (*a*).

(*x*) As to which see post, p. 38, 39.

(*y*) Order XXXV. r. 5.

(*z*) Order XXXVII. r. 22.

(*a*) Order XXXV. r. 5.

(*b*) Ibid. r. 2.

(*c*) Ibid. r. 4.

consent. Such appeal is to be by way of indorsement on the summons by the Registrar at the request of any party or by a notice in writing to attend before the Judge without a fresh summons within six days after the party complaining has notice of the District Registrar's decision; but such appeal is no stay of execution (c).

Matters in the Chancery Division, as well as in the Queen's Bench Division, may as far as possible go on in the District Registry, and in such case all certificates of the Judges' chief clerks, and other documents used in London and requiring to be filed, are filed in London if not already filed in the District Registry, and if the Court or Judge so direct office copies thereof are transmitted to the District Registry (d). Every reference to a Judge by, or appeal to a Judge from a District Registrar in any cause or matter in the Chancery Division must be to the Judge to whom the cause or matter is assigned (e).

The offices of each District Registrar of the High Court of Justice are open on every day and hour in the year on which the offices of the Registrar of the County Court of the place in which the District Registry is situate are required to be kept open (f), but the office of the District Registry in Manchester is not open in any year on the five days next following Whit Monday (g).

To deal secondly with her Majesty's Court of Appeal. This Court was until lately constituted by five *ex officio* Judges, viz., the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas,

(c) Order xxxv. rr. 8, 9, 10.

(d) Ibid. r. 21.

(e) Ibid. r. 12.

(f) Order lxiii. r. 7.

(g) Ibid. r. 10.

and the Lord Chief Baron of the Exchequer; but there being now, in consequence of the recent Order in Council (*h*), no Chief Justice of the Common Pleas or Chief Baron of the Exchequer, there are now but three *ex officio* Judges, and there are in addition so many ordinary Judges as Her Majesty shall from time to time appoint, such ordinary Judges being styled "Justices of Appeal" (*i*). The former Lords Justices of Appeal in Chancery were made Judges of this Court, which at the present time, in addition to the *ex officio* Judges, has six Judges. The Judges of the Court (except the Lord Chancellor) hold their offices on the same terms as the Judges of the High Court of Justice (*k*). In addition to the Judges mentioned, the Lord Chancellor has power to request the attendance of any Judge of any Division of the High Court, except during the time of the spring or summer circuits, as an additional Judge (*l*).

Jurisdiction
vested in the
Court of
Appeal.

All the jurisdiction and powers formerly vested in any of the following Courts or persons are now vested in this Court of Appeal, viz.: (1.) In the Lord Chancellor and Court of Appeal in Chancery in the exercise of his and its appellate jurisdiction, and also as a Court of Bankruptcy Appeal. (2.) In the Court of Appeal in Chancery of the County Palatine of Lancaster, or of the Chancellor of the duchy and said county palatine. (3.) In the Lord Warden of the Stannaries, or in the Lord Warden sitting in his capacity of judge. (4.) In the Court of Exchequer Chamber; and (5.) In Her Majesty in Council, or the Judicial Committee of the Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order of lunacy made by the Lord Chancellor or any other person having jurisdiction in lunacy (*m*).

(*h*) As to which see ante, pp. 13, 14.

(*i*) Jud. Act, 1875, s. 4, amended by 39 & 40 Vict. c. 59, ss. 15, 19.

(*k*) See ante, p. 13.

(*l*) Jud. Act, 1875, s. 4, amended by 39 & 40 Vict. c. 59, s. 19.

(*m*) Jud. Act, 1873, s. 18.

The sittings of the Court of Appeal, or in London ^{Sittings of the Court.} or Middlesex of the High Court of Justice, are four in every year, viz.: (1.) The Michaelmas Sittings, which commence the 2nd of November and end the 21st of December; (2.) The Hilary Sittings, which commence the 11th of January and end on the Wednesday before Easter; (3.) The Easter Sittings, which commence on the Tuesday after Easter week and end on the Friday before Whit Sunday; and (4.) The Trinity Sittings, which commence on the Tuesday after Whitsun week and terminate on the 8th of August (*n*). These sittings are nearly identical with the formerly existing terms, which are abolished so far as they relate to the administration of justice (*o*). The Vacations that now ^{Vacations, Holidays, &c.} exist are four, viz.: the Long, Christmas, Easter, and Whitsun (*p*), of which the Long is the same as heretofore, viz.: commencing the 10th of August and terminating the 24th of October, and during this time no pleading can be amended or delivered unless directed by a Court or Judge, nor is the time of the Long Vacation reckoned in the time allowed for filing, amending, or delivering any pleading unless otherwise directed by a Court or Judge (*q*). Besides this, where the time ^{Time.} limited for doing any act is less than six days, Sunday, Christmas Day, and Good Friday are not counted, and where the last day for doing any act which cannot be done when the offices are closed, expires on a Sunday or other day when they are closed, it is considered duly done if done on the first day when the offices are open (*r*). In any case in which any particular number of days not expressed to be clear days is prescribed by Rules of Court the same are reckoned exclusively of the first day and inclusively of the last (*s*). It is not necessary for the Courts to sit on the day

(*n*) Order LXIII. r. 1.
 (*o*) Jud. Act, 1873, s. 26.
 (*p*) Order LXIII. r. 4.
 (*q*) Order LXIV. rr. 4, 5.
 (*r*) Ibid. rr. 2, 3.
 (*s*) Ibid. r. 12.

appointed to be kept as the Queen's Birthday (*s*), but the offices of the Supreme Court must be open on every day of the year except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day and the next following working days, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving (*t*). The general office hours of the office of the Supreme Court are 10 to 4, and Saturdays 10 to 2 (*u*). During Vacations two Judges act as Vacation Judges and may sit separately, or together as a Divisional Court as occasion may require (*x*).

Circuits.

The powers of issuing commissions of assize are kept alive, subject to arrangements between the Judges of the High Court. The Judges of the Queen's Bench Division go circuit (*y*). There are always two circuits in each year, viz.: the winter circuit and the summer circuit, and in addition in some places there are other assizes; and by two recent Acts, viz., 39 & 40 Vict. c. 57 (amended by 40 & 41 Vict. c. 46) and 42 Vict. c. 1, several counties may under certain circumstances be united together for the purpose of the holding of assizes. The winter circuit begins in January, and the summer circuit in July. The Judges arrange amongst themselves who shall go on the different circuits. When the whole duties of the circuits cannot be performed by the Judges certain persons may be appointed Commissioners for the purpose of presiding thereat (*z*).

Officers of the Courts.

There are various officers of the Courts besides the Judges. In the Queen's Bench Division may be mentioned the Masters, the Associates, and the Sheriffs;

(*s*) Order LXIII. r. 2.

(*t*) Ibid. r. 6.

(*u*) Ibid. rr. 8, 9.

(*x*) Ibid. rr. 11, 12.

(*y*) Jud. Act, 1873, ss. 29, 37.

(*z*) Ibid. s. 29.

and in the Chancery Division, the Chief Clerks, the Registrars, the Paymaster-General, the Record and Writ Clerks, the Examiners, the Taxing Masters, and the Conveyancing Counsel.

The Masters attend in Court during its sittings, also ~~The Masters.~~ in Chambers to dispose of various matters of lesser importance and to tax costs, and to dispose of matters referred to them by the Judges—*e g.*, actions involving questions of account. They also receive money paid into Court (*a*).

Under the Rules of 1883 six of the Masters are to be selected according to a rota, to attend as Masters at Chambers during each of the four sittings of the offices in the year, three of whom are to sit one in each of three rooms appropriated for that purpose at the Chambers of the Royal Court of Justice every Monday, Wednesday, and Friday throughout the sittings, and the remaining three on Tuesdays, Thursdays, and Saturdays throughout the same sittings.

(*a*) It has been specially provided that the Masters shall have no jurisdiction in certain matters, viz. :—

- (*a*) All matters relating to criminal proceedings or to the liberty of the subject.
- (*b*) The granting leave for service out of the jurisdiction of a writ of summons or of notice thereof.
- (*c*) The removal of actions from one Division or Judge to another Division or Judge.
- (*d*) The settlement of issues, except by consent
- (*e*) The granting of inspection and other orders under Order L. rr. 1-5.
- (*f*) Appeals from district registrars.
- (*g*) Prohibitions.
- (*h*) Injunctions and other orders under sub-sect. 8 of sect. 25 of the Judicature Act, 1873.
- (*i*) Awarding of costs other than costs of any proceeding before such Master and other than any costs which by the rules or by the order of the Court or a Judge he is authorized to award.
- (*k*) Reviewing taxation of costs.
- (*l*) Orders absolute for charging stocks, funds, annuities, or share of dividends, or annual proceeds thereof.
- (*m*) Acknowledgments of married women (Order LIV. r. 12).

A Master has jurisdiction to hear summonses under the Debtors Act, 1869, and all such summonses are in the first instance to be heard before a Master; but his power only extends to making an order for payment by instalments, and if it appears to him to be a case for committal he must adjourn the same to be heard before a Judge (Order LIV. r. 19).

Each Master is to occupy the same regular room, and take all applications proper to be made in Chambers and according to alphabetical lists (*b*), subject to this—viz., every action in London is to be assigned specially to one of these Masters, all proceedings being marked with his name, and then he is always to deal with that action subject to the same being transferred to another Master by the Lord Chief Justice, and subject also to the provision that in the particular Master's absence from illness or other urgent cause or during any vacancy any other Master may deal with the action (*c*). If when an action comes before a Master it has not been already thus assigned it shall be marked with that Master's name, and it shall thereupon become assigned to him (*d*). If a Master to whom an action has been assigned is not sitting in one of the allotted rooms according to the above arrangements, it may be heard by him in his own room (*e*). One of the Masters also from time to time is to be specially present at Chambers to control and manage the general business and arrangements and give all necessary directions with respect to questions of practice and procedure (*f*).

The Associates. The duties of the Associates are to enter causes for trial, give certificates for judgment, in pursuance of the Judge's directions, and other like matters.

The Sheriffs. The duties of the Sheriffs are to carry out the judgment of the Court by enforcing the various writs of execution delivered to them.

The Chief Clerks. The duties of the Chief Clerks are to attend in the Chambers of the various Judges of the Chancery Division to whom they are attached and to take accounts

(*b*) Order LIV. rr. 13, 14, 15.

(*c*) Order V. rr. 6, 7, 8.

(*d*) Order LIV. r. 17.

(*e*) Ibid. r. 18.

(*f*) Order LXI. r. 2.

and inquiries, with the assistance of junior clerks under them, and also to dispose of various interlocutory applications arising in the course of actions, and generally the Judges have power subject to the rules to order what matters shall be heard and investigated before the Chief Clerks (*g*).

In particular certain matters are enumerated as specially to be disposed of in Chambers by Judges of the Chancery Division, all of which at any rate in the first instance come before the Chief Clerks, and amongst them may be mentioned the following:—

- (1.) Applications for payment or transfer out of Court, where there has been a judgment or order declaring the parties' rights, or where the title depends only on proof of identity, birth, marriage or death, and also in all cases where the fund does not exceed £1,000.
- (2.) Applications under the Trustee Relief Acts (*h*) where the fund does not exceed £1,000.
- (3.) Applications under the Infants' Settlement Act (*i*).
- (4.) Applications as to guardianship and maintenance.
- (5.) Applications connected with the management of property.
- (6.) Applications for or relating to the sale of property (*k*).

Each Chief Clerk has for the purpose of any proceedings before him full power to issue advertisements, to summon parties and witnesses, to administer

(*g*) Order L.V. r. 15. It is, however, specially provided that no order for general administration of any estate shall be made by a Chief Clerk (*Ibid.*).

(*h*) See post, Part III. Ch. V.

(*i*) *Ibid.*

(*k*) Order L.V. r. 2.

oaths, to require the production of documents, and when so directed by the Judge, to examine parties and witnesses either upon interrogatories or *vidæ voce* as the Judge shall direct; and any parties or witnesses neglecting to obey a summons to attend in this way are liable for contempt and may be proceeded against accordingly (*m*).

The Registrars. The duties of the Registrars are to enter causes for trial, to attend in Court and take minutes of the decision given, and afterwards to draw the same up in proper form and settle them in the presence of the different parties or their solicitors (*n*).

The Paymaster-General. The duties of the Paymaster-General are to keep the books in Chancery containing suitors' accounts of money paid into and out of Court, and draw cheques for suitors, and make investments in and bespeak sales of stock, according to the Court's orders.

The Record and Writ Clerks. The duties of the Record and Writ Clerks are to receive all proceedings, affidavits, &c., filed in the course of Chancery proceedings, to seal writs, and furnish office copies of affidavits, &c., when required.

The Examiners. The duty of the Examiners is to preside at the examination of witnesses, in some cases.

Procedure before Examiners. The Court has very full power to make orders for the attendance of any person to be examined upon oath, and to produce documents (*o*), and any person wilfully disobeying any such order is liable to attachment (*p*). The Examiner must take down the party's deposition in the presence of parties, counsel, &c., subject to cross-examination and re-examination (*q*), not ordinarily by

(*m*) Order LV. rr. 16, 17.

(*n*) Generally as to them see Order LXII.

(*o*) Order XXXVII. r. 5.

(*p*) Ibid. r. 8.

(*q*) Ibid. r. 11.

question and answer but by way of a statement which when completed is read over to the witness and signed by him in the presence of such of the parties as think fit to attend. If the witness refuses to sign the depositions the Examiner signs them. Objections to any questions are taken down by the Examiner, who may express his opinion but has no power to decide the point (*r*), which must be dealt with by the Court or a Judge (*s*). If a witness himself objects to any question, and the Court or a Judge decides that it must be answered, the witness may be ordered to pay the costs occasioned by his objection (*t*). The depositions before the Examiner when completed are filed in the Central Office (*u*), and the Examiner may make a special report to the Court touching the examination and the conduct or absence of any witness (*x*). Where any written deposition of a witness has been filed, such deposition is printed unless otherwise ordered (*y*).

The duties of the Taxing Masters are to tax solicitors' costs. They are respectively assistant to each other and may tax or assist in taxing any bill which has been referred to any other Taxing Master (*z*). They have a general discretion subject to the rules of the Court (*a*), and the following are some special rules laid down for their guidance:—As to pleadings, affidavits, &c., they may have regard to any special work, labour and expenses (*b*); the charge for drawing any document shall include any copy made for use of the solicitor, agent, or client, or for counsel to settle (*c*). As to perusals the fees are not to apply when

The Taxing
Masters.

-
- (*r*) Order xxxvii. r. 12.
 - (*s*) Ibid. r. 14.
 - (*t*) Ibid. r. 15.
 - (*u*) Ibid. r. 16.
 - (*x*) Ibid. r. 17.
 - (*y*) Order lxvi. r. 5.
 - (*z*) Order lxv. r. 19.
 - (*a*) See Order lxv.
 - (*b*) Order lxv. r. 27 (1).
 - (*c*) Ibid. r. 27 (2).

the same solicitor is for both parties (*d*); a special allowance for agency correspondence may be made when it has been considerable (*e*); special fees may be allowed under special circumstances for attendances in Judges' Chambers and for the preparation of any case or matter to be laid before a Judge in Chambers (*f*); no costs of counsel attending in Chambers are to be allowed without a certificate of the Judge that the case is one proper for counsel (*g*); he may direct what parties are to attend before him on taxation when the costs are to come out of any fund or estate (*h*); where an action or petition is dismissed or motion refused with costs he may tax them without an order (*i*); costs of briefs prematurely prepared are to be disallowed (*k*).

**The Convey-
ancing Counsel.**

The Conveyancing Counsel of the Court are certain counsel appointed to assist the Court in matters of conveyancing; thus if property the subject-matter of Chancery proceedings is about to be sold, the matter will be referred to one of these officers to investigate the title and prepare the conditions of sale. Where in pursuance of any direction by the Court or Judge in Chambers, drafts are settled by any of the Conveyancing Counsel, the expense of procuring such drafts to be previously or subsequently settled by other counsel on behalf of the same parties on whose behalf such drafts are settled by the Conveyancing Counsel of the Court are not allowed on taxation either or between party and party or solicitor and client unless otherwise ordered (*l*).

(*d*) Order LXV. r. 27 (7).

(*e*) Ibid. r. 27 (10).

(*f*) Ibid. r. 27 (12).

(*g*) Ibid. r. 27 (16).

(*h*) Ibid. r. 27 (27).

(*i*) Ibid. r. 27 (33).

(*k*) Ibid. r. 27 (49).

(*l*) Order LXV. r. 22. As to the Conveyancing Counsel generally, see Order LI. rr. 7-13.

With regard to some of the foregoing officers, the Supreme Court of Judicature (Officers) Act, 1879 ^{of Judicature (Officers) Act, 1879.} (m) and Order LX., Rule 3, must be borne in mind. That Act provided (n) that a Central office of the Supreme Court of Judicature should be established under the control and superintendence of officers called Masters of the Supreme Court of Judicature, in which was to be concentrated and amalgamated the several offices following, and any other that might by rule of Court be directed, and there were to be transferred thereto the existing officers thereof—viz., The Record and Writ Clerks office, the Enrolment office, the Report office, the offices of the Masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the Bills of Sale office and also the offices of the Associates of those Divisions, the Crown office of the Queen's Bench Division, the Queen's Remembrancer's office, the office of the Registrar of Certificates of Acknowledgments of Deeds by Married Women, and the office of the Registrar of Judgments. In addition it was provided that there should be transferred to such Central office such of the existing officers employed under the Registrars of the Probate, Divorce, and Admiralty Division, as the Judges of that Division should respectively select as necessary for the performance of the duties to be performed in the Central office; and such other officers of and persons employed in the Supreme Court, or the offices thereof, as should be from time to time transferred to the Central office by Rule of Court. It was also enacted (o) that the business performed at the Central office should comprise business formerly performed in the various offices amalgamated, but the several officers are to be interchangeable and capable of performing any of the duties of the office, and subject thereto, the duties of each are to remain as before. Further provisions

(m) 42 & 43 Vict. c. 73.

(n) Sects. 4-7.

(o) Sect. 12.

elaborating this and dividing the Central office into ten departments for the convenient dispatch of business are made by the Rule of 1883 (*p*).

It may be remarked that this is simply a further carrying out of the idea and design of the Judicature Acts, 1873 and 1875, and has more effect in name than anything else.

Solicitors. Solicitors are also to a certain extent officers of the Court.

Referees and Assessors. In addition to the foregoing, certain new officers have been appointed by the Judicature Act, 1873—viz., Referees, and Assessors. Referees are persons to whom any matter is referred by the Court, and they may be either official referees, that is, permanent referees to whom any matters may be referred, or special referees, that is, persons specially chosen for the one particular case. Assessors are persons having peculiar or special knowledge in any matter before the Court, and called in to assist the Court in such matter. Subject to any right to have particular cases submitted to a jury, questions may be referred to any official or special referee, and the Court may also in cases which cannot conveniently be tried by jury order any question or issue of fact or any question of account arising therein to be tried before a referee, who, subject to any order, has now the same powers and authorities (except to commit to prison, or to enforce any order by attachment or otherwise) as a Judge of the High Court, including power to direct that judgment be entered for any or either party, subject to the power of either party to move to set the same aside on the ground that upon the finding as entered the judgment so directed is wrong. Any matters referred to the official referees (there are at present four of them) are distributed amongst them in rotation, subject to any special order, sending it to one in particular. A referee may hold the trial at or

adjourn it to any place he may deem most convenient, have any inspection or view, and shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem* in a similar manner as in an action tried before a jury. Subject to any order, evidence is to be taken before him and the attendance of witnesses enforced by subpœna, and the trial is to be generally conducted as nearly as circumstances will admit as trials before a Judge of the High Court, but not so as to make the tribunal of the referee a public Court of justice (*g*).

The Official Referees sit at least from 10 to 4 on every day during the several sittings of the High Court of Justice, except on Saturdays, when they sit from 10 to 1; but there is nothing to prevent their sitting on any other days (*r*).

A referee may before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any fact specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on any such submission or statement is entered as the Court may direct; and the Court has power to require any explanations or reasons from the Referee, and to remit the cause or matter or any part thereof for re-trial or further consideration to the same or any other Referee, or the Court may decide the question referred to any Referee on the evidence taken before him, either with or without additional evidence as the Court may direct (*s*).

Finally, we should notice the ultimate Court of Appeal—viz., the House of Lords, and to deal with this

(*g*) Jud. Act. 1873, ss. 56-59, 83; Order xxxvi. rr. 43-55.

(*r*) Order lxiii. r. 16.

(*s*) Order xxxvi. r. 52.

Origin of its
jurisdiction
as a Court of
Appeal.

in its origin it is necessary for us to go back to very ancient times. It would appear that in the earliest times the House of Lords was possessed of both an original and an appellate jurisdiction in Common Law matters, both of which fell into disuse; and it seems that the House of Lords had not then any jurisdiction in appeals from Chancery. About the time of the Restoration an attempt was made by the Lords to regain both the former jurisdictions, which, though unsuccessful with regard to its original, was successful with regard to its appellate jurisdiction; and at about the same time an appeal in Chancery matters was usurped, and after a struggle successfully so, and the jurisdiction of the House of Lords as an ultimate Court of Appeal has not since been questioned (*t*).

The consti-
tution of the
House of Lords
as a Court of
Appeal.

But the constitution of the House of Lords as an ultimate appellate Court has in modern times been found to be not altogether satisfactory, and consequently, by the Judicature Act, 1873 (*u*), it was proposed to abolish its jurisdiction. This provision was, however, first suspended in its operation (*x*), and then was passed the Appellate Jurisdiction Act, 1876 (*y*), which repeals the former provision, and perpetuates the House of Lords as the ultimate Appellate Court with an improved constitution. By its provision is made for the appointment of two Lords of Appeal in ordinary for the House of Lords (*z*), and it is enacted that no appeal shall be heard and determined there unless there are present not less than three Lords of Appeal, to consist of the following persons: (1) the Lord Chancellor for the time being, (2) the Lords of Appeal in Ordinary, and (3) such Peers of Parliament as are

Appellate
Jurisdiction
Act, 1876.

(*t*) See Brown's Law Dict. 2nd ed. p. 261, tit. "House of Lords, Jurisdiction of." See also the judicial powers of the Lords historically traced in "Hallam's History of England," vol. iii. p. 17 *et seq.*

(*u*) Sect. 20.

(*x*) Jud. Act, 1875, s. 2.

(*y*) 39 & 40 Vict. c. 59.

(*z*) Sect. 6.

for the time being holding or have held any high judicial offices (*a*). The Act also provides that appeals may be heard and determined notwithstanding Parliament may not be then sitting.

This must conclude our remarks on the Courts; and in next proceeding to the practice in them, we would only remind the student of what has already been once stated, viz., that the practice, though for the main part regulated by the Judicature Acts and the rules thereunder, yet is not entirely so, the Act of 1873 (*b*) providing that where no special provision is made, the practice of the Courts is to be as nearly in the same manner as it might have been exercised previously by the Courts from which the jurisdiction was transferred.

(*a*) Sect. 5. "High Judicial office" means any of the following offices, viz.: The Office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of one of Her Majesty's Superior Courts of Great Britain and Ireland, sect. 25.

(*b*) Sect. 23. See also Order LXXII. rule 2.

CHAPTER III.

PARTIES TO ACTIONS AND JOINDER OF CAUSES OF ACTION.

BEFORE commencing any action in the High Court it is very important to consider carefully who are the necessary parties to any such action, both in the capacity of plaintiffs and defendants, and how such parties should sue and be sued, and also any preliminary formalities that may, under certain circumstances, have to be observed.

Non-joinder of plaintiffs or defendants. In the first place a right may be vested in several persons jointly, and if so they must sue together ; or again, certain persons may be liable only jointly, and if so they must be sued together. The non-joinder, however, of either plaintiffs or defendants is not in any way fatal to the action. In the event of non-joinder of persons who should have been joined in the action as co-plaintiffs, the Court, if satisfied that the non-joinder was through mistake, and that it is necessary to do so, may order any person or persons to be added as plaintiffs on such terms as may seem just, his or their consent being given thereto (c). The non-joinder of defendants may also equally be rectified, for they may be joined by leave of the Court or a Judge (d). In this latter case the course of practice is for the plaintiff to file an amended copy of and sue out a writ of summons and serve such new defendant therewith (e).

(c) Order xvi. rr. 2, 11.

(d) Ibid. r. 11.

(e) Ibid.

In the next place it may happen that a person is sometimes, through mistake, wrongly joined as a plaintiff or wrongly made a defendant; but the misjoinder of either plaintiff or defendant is not in any way fatal to the action. In the event of misjoinder of persons as plaintiffs or defendants judgment may be given for or against such one or more as may be found entitled or found liable without any amendment, and the Court or a Judge, on such terms as may appear just, may order that the name or names of any party or parties improperly joined, whether as plaintiffs or defendants, be struck out; and generally no action is defeated by any misjoinder, but a defendant is entitled to any extra costs occasioned by the plaintiff's misjoinder. The Court or a Judge also, if satisfied that a person wrongly made plaintiff has been so made by mistake, may order any other person or persons to be substituted (*f*). Any application of the foregoing nature may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner (*g*).

It is not at all necessary that the defendants to an action should all be interested to the same extent, but the Court or a Judge may make such order as may appear just, to prevent any defendant being embarrassed or put to expense when he may have no interest (*h*). A plaintiff is able if several persons are liable on a contract to join them all in the same action (*i*): and if he is doubtful, whether in contract or otherwise, against which of two or more persons he can sustain a claim, he may join them all in one action, to the intent that the question as to which is liable and to what extent may be determined (*k*).

(*f*) Order xvi. rr. 1, 2, 11.

(*g*) Ibid. r. 12.

(*h*) Ibid. r. 5.

(*i*) Ibid. r. 6.

(*k*) Ibid. r. 7.

Counter claim
in case of
misjoinder.

Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counterclaim or set-off, he may obtain the benefit thereof by establishing his set-off or counterclaim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon (*l*).

Parties represented by
trustees.

Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives without joining any of the parties beneficially interested in the trust or estate, and they are considered as representing such parties in the action; but any such persons may, at any stage of the proceedings, be added as parties thereto (*m*).

Several parties
with same
interest.

Where there are numerous parties having the same interest, any one of such persons may sue or be sued, or be authorized by the Court to defend such action on behalf of the others (*n*); and where in any case there may be a doubt on some construction who may be entitled as heir-at-law or next of kin, some person may be appointed by the Court to represent such person or persons (*o*).

Consolidation
of actions.

Actions in any Division or Divisions may be consolidated by order of the Court or a Judge in the manner before in use in the Superior Courts of Common Law (*p*). This is nothing new; when several actions are brought by the same plaintiff against several defendants, and the questions in dispute and the evidence to be adduced are the same in all, the plaintiff will, though there is no joint liability, be put to his election in which one he will proceed, and pro-

(*l*) Order xvi. r. 3.

(*m*) Ibid. r. 8.

(*n*) Ibid. r. 2.

(*o*) Ibid. r. 32.

(*p*) Order xlix. r. 8.

ceedings in the rest will be stayed on the defendants in the other actions submitting to be bound by the verdict in the one trial. This practice, it is said, was originally introduced by Lord Mansfield in actions against underwriters in insurance cases, and the idea is to save useless expenditure. When necessary the actions will be divided into classes, and all but one in each class stayed. In ejectment cases also, where the title is the same, several actions will be consolidated. The Court will not, however, stay proceedings where the plaintiffs in the several actions are different, though the defendants are the same. It may be noticed that the consolidation order does not bind the plaintiff, so that notwithstanding a verdict against him in one action he may proceed with the other or others. It seems that when actions are consolidated all the defendants are liable to the plaintiff for the costs of the action that is tried, and that they stand to one another in the relation of joint defendants, so as to be liable to contribution for those costs.

Costs on consolidated actions.

It sometimes happens that when a defendant's defence is put in it is found to contain some counter-claim which raises questions not only between the plaintiff and defendant, but also between third persons not parties to the action. In such a case the proper course is for the defendant in his defence to add a further title similar to the title in a statement of claim, setting forth the names of all such persons, and to deliver his defence, indorsed with the form provided, to them within the time within which he is required to deliver it to the plaintiff, and the action then proceeds against them in exactly the same way as if they had been made parties thereto, and any such third party may deliver a reply within the time within which he might deliver a defence if it were a statement of claim (g). A simple instance of this would be as

Parties joined in consequence of defence.

(g) Order XXI. rr. 11-14.

follows :—A. sues B. ; B. has a counterclaim against A. and C. B. is by this provision enabled to set it up in the action brought by A., bringing in C. as above detailed.

Contribution
against a
person not a
party.

Again, it may happen that a person who is being sued claims, in the event of a judgment being recovered against him, contribution from some third person not a party to the action, or there may be from some other cause a question in the action which ought to be determined not only as between the plaintiff and defendant, but, in addition, between some other person. In such a case the defendant may, within the time for delivering his statement of defence, by leave of the Court or a Judge, issue and serve such third person with a notice of his claim (called the third-party notice) stamped with the seal of the Court, together with a statement of the plaintiff's claim, or if there is not one, then with a copy of the writ in the action. If the third person desires to dispute all liability, he can enter an appearance within eight days from the service of the notice, or after that time may be allowed to appear by the Court or a Judge. If the third person, after being served as above stated, does not appear, the effect now, under the Rules of 1883, is that the defendant may let judgment go, and after satisfying it, or before satisfying it by leave of the Court or a Judge, enter judgment against the third party for the contribution, or if the defendant goes to trial and loses the action, the Judge at the time may enter such judgment as the nature of the case may require for the defendant against the third party, but execution not to be issued thereon without leave until the defendant has first satisfied the plaintiff's judgment. If the action is disposed of otherwise than by trial, then again the Court or Judge has power, after the defendant has satisfied the plaintiff, of entering judgment for the defendant against the third party (r). This is a material improve-

Consequences
of non-appear-
ance of third
party.

ment in the practice as it stood before these new Rules, for the effect of the non-appearance of the third party then was not that the defendant could get judgment against him, but simply binding him by the proceedings, and then a fresh action had to be brought for the contribution.

If, however, the third party appears, then the defendant who gave the third-party notice applies to the Court or Judge for directions as to the mode of determining the questions in the action, and thereupon directions may be given for trying the question of liability of the third party, and leave may be given to him to come in and defend the action, and generally the Court or a Judge has the widest powers to act as may be desirable, and to decide all questions of costs as between the third party and the other parties to the action (s). Where a defendant claims any such contribution or indemnity against any other defendant to the action a notice may be issued, and the same procedure is to be adopted as if he were simply a third party, but this is not to prejudice the rights of the plaintiff against any defendant (t).

Course on
appearance of
third party.

A simple instance of the effect of the foregoing third-party procedure is found in an action against one of two or more sureties.

Instance of
third-party
procedure.

If in the course of an action one of the parties dies or becomes bankrupt, or a female party marries, or if in any way any devolution of the estate or title of any party to the action occurs *pendente lite*, the action does not abate, but an order may, if necessary, be made *ex parte* for the personal representative, trustee, husband, or other successor in interest (if any) to be made a party to the action or to be served with notice thereof, and such order as may be just may be made for disposal

Death, &c., of
parties.

(s) Order xvi. rr. 52-54.

(t) Ibid. r. 55.

of the action. On service of any such order the new party must enter an appearance within the same time and in the same manner as if served with a writ of summons (u); but he may apply within twelve days of service to discharge or vary any such order, and if a person under disability other than coverture, such application may be within twelve days from the appointment of a guardian *ad litem*, and in this case such an order does not have any effect until after the expiration of such period of twelve days (x). If on the death of a party to an action the person entitled to proceed fails to do so, any other party, including the person against whom the action may be continued, may take out a summons to compel him to proceed, or in default judgment may be entered for the party so applying (y).

Certifying
change of
interest.

The fact of any such change of interest as aforesaid has to be certified to the proper officer by the solicitor for the plaintiff or person having the conduct of the proceedings, and such officer makes an entry thereof in the Cause Book which is kept at the offices, and when it has stood so marked for one year, it is at the end of that period to be struck out of the Cause Book (z).

Proceeding
without per-
sonal repre-
sentative of
deceased party.

If in any cause, matter or other proceeding it appears to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing his estate, or may appoint some person to represent his estate for all purposes of the proceedings, on such notice to such person (if any) as the Court or a Judge shall think fit, either specially, or generally by public advertisement, and the order so made and any order consequent

(u) Order xvii. rr. 1-5.

(x) Ibid. rr. 6, 7.

(y) Ibid. r. 8.

(z) Ibid. rr. 9, 10.

thereon binds the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party (*a*).

Different causes of action may be joined in the same action in most cases, but if it appears to the Court or a Judge that they cannot be conveniently tried together, separate trials may be ordered, and any defendant may apply, alleging that such causes of action cannot be conveniently disposed of together, and the Court or a Judge may order any such causes to be excluded (*b*). Except, however, by special leave, an action for recovery of land cannot be joined with any other cause of action except in respect of mesne profits, or arrears of rent, or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held (*c*) ; nor, except by like leave, can claims by a trustee in bankruptcy as such be joined with any other claim by him in any other capacity (*d*). Claims by or against an executor or administrator as such may only be joined with claims by or against him personally when such last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator (*e*).

Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendants (*f*), and claims by or against husband and wife may be joined with claims by or against either of them separately (*g*).

-
- (*a*) Order XVI. r. 46.
 - (*b*) Order XVIII. rr. 1, 8, 9.
 - (*c*) Ibid. r. 2.
 - (*d*) Ibid. r. 3.
 - (*e*) Ibid. r. 5.
 - (*f*) Ibid. r. 6.
 - (*g*) Ibid. r. 4.

Persons not
sui juris
suing or being
sued.

Infants must sue by next friend (*h*) and defend by guardian *ad litem* (*i*). Married women usually sue and defend together with their husbands, but the Rules of 1883 provide that they may sue and be sued as provided by the Married Women's Property Act, 1882 (*k*), that is to say, as if a *feme sole* (*l*). Lunatics and persons of unsound mind sue by their committee or by next friend, and defend by their committee or guardian appointed for that purpose (*m*). In practice a next friend or guardian *ad litem* is usually some person closely connected with the plaintiff or defendant, but there is no rule that this must be so. The next friend of a plaintiff is liable for the due prosecution of the action and for the costs of it, and he therefore has to sign a consent expressing his willingness to act as next friend, which consent is filed with the writ (*n*). The guardian of a defendant incurs no such liability for costs. No order is necessary for the appointment of such guardian, but the solicitor applying to enter such appearance makes and files an affidavit in the Form No. 8, in Appendix A, Part II., of the Rules of 1883, with such variations as circumstances may require, and thereupon the appearance is received (*o*).

Corporations,
companies, &c.

Corporations sue and are sued in their corporate names, and the solicitor by whom they defend should be appointed under their common seal. Railway companies and joint stock companies also sue and are sued in their corporate names. Certain banking and other companies, however, by virtue of various statutes, sue and are sued in the name of one of their public officers (*p*).

(*h*) Order xvi. r. 16.

(*i*) Ibid. r. 18.

(*k*) Ibid. r. 16.

(*l*) 45 & 46 Vict. c. 75, s. 1.

(*m*) Order xvi. r. 17.

(*n*) Ibid. r. 20.

(*o*) Ibid. r. 18.

(*p*) See hereon Arch. Pr. 13th ed. p. 976, *et seq.*

Actions comprising matters of a public nature must be commenced in the name of the Attorney-General; the person at whose instance they are commenced, and who for all practical purposes is the plaintiff, being called the relator. Such relator is liable for the costs, and therefore a written authority to the solicitor to act has to be signed by him and filed on issuing the writ (*q*). Matters of a public nature.

A person is admitted to sue or defend as a pauper provided he makes an affidavit that he is not worth £25, his wearing apparel and the subject-matter of the action only excepted, and that he obtains an opinion from counsel on a case laid before him that he has reasonable grounds for proceeding. The truth of the case sent to counsel has to be verified by the affidavit of the party or his solicitor. When a person is admitted to sue or defend as a pauper he is liable to pay no Court fees, and nothing whatever must be received by his solicitor or counsel, and if they receive anything they will be guilty of contempt of Court, and the pauper paying or agreeing to pay anything is to be forthwith dispaupered. The Court will, if necessary, assign counsel and solicitor to the pauper, who are not at liberty to refuse to render assistance, except on satisfying the Court of good reason for such refusal. All proceedings taken for the pauper must be signed by the solicitor, whose duty it is to take care that nothing is done without good cause (*r*). Suing in form *pauperis*.

Although it is usual in practice to give notice to a defendant before bringing an action against him, it is not generally necessary. The chief case in which such notice must be given is in an action against a justice of the peace for anything done by him in the execution of his duty. A month's notice prior to the action being commenced must here be given (*s*). Also when any Notice before action.

(*q*) Order xvi. r. 20.

(*r*) Ibid. rr. 22-31.

(*s*) Arch. Pr., pp. 1073-1080.

action is intended to be brought against a constable who has acted under a warrant, demand in writing must be made of the perusal and copy of the warrant six days before commencing an action against him. If this is granted within that time, the justice who granted the warrant must be joined as a co-defendant, and then the mere production of the warrant at the trial will entitle the constable to a verdict, though if the justice had no jurisdiction the plaintiff will recover against him; if not granted within the six days the action may then be commenced against the constable alone (t).

(t) Arch. Pr. 1073-1080.

PART II.

OF THE PRACTICE AS SPECIALLY OCCURRING IN THE QUEEN'S BENCH DIVISION.

CHAPTER I.

PROCEEDINGS TO APPEARANCE.

PROCEEDINGS are commenced by an action (*u*), which is ^{An action.} defined as the means of recovering in a Court of Justice what is due and owing to oneself (*x*). The first step in ^{Writ of} an action is a writ of summons (*y*), which may be issued ^{summons.} in London, or (except in Probate cases) in a district registry (*z*). This writ is tested in the name of the Lord Chancellor; or if that office is vacant, in the name of the Lord Chief Justice of England, and bears date on the day it is issued (*a*). It specifies the Division to which it is intended that the action should be assigned (*b*), and it is also, in the Queen's Bench Division, assigned to one of the Masters, as before explained, if it is issued from the Central Office (*c*). It states the plaintiff's and defendant's names, and summonses the defendant to appear. If the writ is issued from a District Registry and the defendant neither resides or carries on business within the District, there must be a statement on the face of the writ that he has the option of appearing at

-
- (*u*) Order I. r. 1.
 - (*x*) Brown's Law Dictionary, 2nd ed. p. 11, tit. "Action."
 - (*y*) Order II. r. 1. See forms in Appendix hereto.
 - (*z*) Order V. r. 1.
 - (*a*) Order II. r. 8.
 - (*b*) Order V. r. 5.
 - (*c*) Ante, p. 23.

the District Registry or at the Central Office, and if he does reside or carry on business within such District, then the statement must be that the defendant must appear at the District Registry (d). Every writ is indorsed with short particulars of the plaintiff's claim, so as to show the defendant at once the nature of the demand made against him, and in proper cases with the special indorsement presently mentioned (e). The address of the plaintiff and the name and address of the solicitor issuing the writ must also be indorsed, and if he is an agent, then the two names must be indorsed. There must also be indorsed an address for service, which if the writ is issued from London must be within three miles of the principal entrance of the Central Hall at the Royal Courts of Justice; and if from a district registry, within the jurisdiction of such registry; and if defendant does not reside within the registry, then in addition an address within three miles of the principal entrance of the Central Hall at the Royal Courts of Justice. If the plaintiff sues in person, then he must indorse upon the writ his place of residence and occupation, and if that is more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, then also an address for service within that distance; and if the writ is issued from a district registry, and he resides beyond it, then an address for service within the registry, and when the defendant does not reside within the registry, then, in addition, an address within three miles of the principal entrance of the Central Hall at the Royal Courts of Justice (f). If the writ is for a debt or liquidated demand only, the amount claimed for debt and cost respectively must be indorsed, and also a notice that upon payment thereof within four days after the service (or in the case of a writ not for service within the jurisdiction within the time allowed for appearance), further proceedings will

(d) Order v. rr. 3, 4.

(e) Order III. rr. 1-3.

(f) Order IV.

be stayed. If defendant does so pay, he is nevertheless entitled to have the costs he pays taxed, and if more than one-sixth is disallowed, the plaintiff's solicitor pays the costs of taxation (*g*). After service the person serving the writ must within three days indorse on it the day of the month and week of the service thereof, otherwise the plaintiff cannot, on non-appearance of the defendant, proceed to judgment by default as detailed in the next chapter, as every affidavit of service of the writ must mention the day on which this indorsement was made; and this rule applies not only where personal service has been effected, but also to a case of substituted service (*h*). In the Appendix will be found the form of a writ of summons (*i*).

If the plaintiff seeks merely to recover a debt or liquidated demand in money, arising (A) upon a contract express or implied, or (B) on a bond or contract under seal, or (C) on a statute for some fixed sum other than a penalty, or (D) on a guarantee where the claim against the principal is a fixed sum, or (E) on a trust, and also (F) in actions for recovery of land, with or without a claim for mesne profits by a landlord against his tenant whose term has expired, the writ may at the option of the plaintiff be specially indorsed with a statement of his claim, or of the remedy or relief which he claims to be entitled to (*k*). The advantages of this special indorsement are two—viz., (1) that if the defendant appears the plaintiff may apply for leave to sign judgment, notwithstanding the appearance, under Order XIV. (*l*); and (2) no further statement of claim is required, or indeed allowed to be delivered, but the indorsement on the writ is to be deemed sufficient (*m*). These points will be presently further noticed.

(*g*) Order III. r. 7.

(*h*) Order IX. r. 15.

(*i*) Post, p. 248.

(*k*) Order III. r. 6. See form of writ in such a case in Appendix hereto.

(*l*) Post, p. 64.

(*m*) Post, p. 70.

Special
indorsement.
under Order
III. rule 6.

Service of writ.

The writ having been issued, the next step is to effect service of it. In some cases the defendant's solicitor will accept service and undertake to appear, which is sufficient (*n*), and if having done this he does not then appear he is liable to attachment, but more usually actual service has to be effected. When practicable this service is personal, by delivering to the defendant a copy of the writ, and at the same time producing to him the original (*o*); but if it is made to appear to the Court or a Judge by affidavit that this personal service cannot be promptly effected, an order for substituted or other service may be made, *e.g.*, on some person connected with defendant, or by sending the copy writ through the post, or by advertisement, &c. (*p*).

Service on particular persons and bodies.

When husband and wife are both defendants, it is necessary now, under the Rules of 1883, to serve them both unless otherwise ordered (*q*). Where the defendant is an infant, the writ is served on his father or guardian, or if none, on the person with whom or under whose care he resides, unless otherwise ordered; but service on the infant *may* be ordered to be good service (*r*). Where the defendant is a lunatic or person of unsound mind, the writ is served on his committee or person with whom he resides, or under whose care he is, unless otherwise ordered (*s*). If the defendant is a corporation aggregate, the writ is served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary. Every writ against the inhabitants of a hundred is served on the High Constable, or, if none, on any other chief acting officer of the police, and if it is against the inhabitants of any county of any city or town, &c., not being part of a hundred or other like

(*n*) Order ix. r. 1; Order xii. r. 18.

(*o*) Strictly speaking, the original need not be produced unless asked for by defendant. The practice is invariably as above stated.

(*p*) Order ix. r. 2; Order x.

(*q*) Order ix. r. 3.

(*r*) *Ibid.* r. 4. As to the course to be taken on the non-appearance of an infant or person of unsound mind so served, see post, p. 63.

(*s*) Order ix. r. 5.

district, it is served on some peace officer thereof (*t*). Railway and other similar companies may be served by the writ being left at or transmitted through the post to the principal office of the company or one of their principal offices where there shall be more than one, or by being given personally to the secretary, or, if no secretary, to a director of the company (*u*). Companies registered under the Companies Act, 1862 (*x*), may be served by leaving the writ, or sending it through the post in a prepaid letter addressed to the company, at their registered office (*y*).

There is a special provision as to the suing and service of partners, or of a person carrying on business in the name of a firm, which calls for special notice. The old practice, before the Judicature Acts, was that on suing a partnership firm the plaintiff must find out who were the members of the firm, and name them and serve them individually as defendants, in the same way that when partners were suing they had to be individually named. Now partners may not only sue but may be sued in the name of their partnership firm (*z*), and service effected upon any one or more of them, or at their principal place of business within the jurisdiction, upon any person having at the time of the service the control or management of the business there (*a*) ; and so also when any one person carries on business in the name of a firm apparently consisting of more than one person, he may be sued in the name of such apparent firm (*b*), and the writ may be served in the same way upon any person having at the time of the service the control or management of the business

Suing and
service of
partners.

-
- (*t*) Order ix. r. 8.
 - (*u*) 8 & 9 Vict. c. 16, s. 135; Arch. Pr. 13th ed. p. 964.
 - (*x*) 25 & 26 Vict. c. 89.
 - (*y*) Sect. 62.
 - (*z*) Order xvi. r. 14.
 - (*a*) Order ix. r. 6.
 - (*b*) Order xvi. r. 15.

there (c). It will be observed that this latter provision only applies to being sued, and not to the case of suing.

Demand for names of partners.

Where a writ is issued in which the plaintiffs are suing under a firm name, the defendant may demand in writing the names and places of residence of the person or persons constituting the firm, and all proceedings may, on application, be stayed till furnished ; or application may be made by summons to a Judge for a statement of the names of such persons, to be verified on oath or otherwise as the Court shall direct (d).

Service in case of vacant possession.

In the case of an action to recover land, if the possession is vacant, and service cannot be effected otherwise, it may be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property (e).

Demand whether writ issued by solicitor's authority.

If a defendant has reason to believe that though a solicitor's name appears on a writ as issuing it, yet his name has been used without his authority, he may serve such solicitor with a demand for him to state forthwith in writing whether it has been issued by him, or with his authority or privity, and, if he answers in the negative, then all proceedings are stayed and nothing further allowed to be done without leave (f).

Change of solicitors.

A party may change his solicitor at any time during an action by simply filing and serving a notice of such change, but until this is done the former solicitor is considered the solicitor of the party (g).

(c) Order IX. r. 7. As to appearance of partners so sued see post, p. 56 ; and as to execution when writ issued in this way see post, pp. 140, 141.

(d) Order VII. r. 2 ; Order XVI. r. 14.

(e) Order IX. r. 9.

(f) Order VII. r. 1.

(g) Ibid. r. 3. If it is an action in the Chancery Division, then in addition a copy of the notice has to be left in the chambers of the Judge to whose court the cause is attached, Ibid.

When a defendant is residing out of the jurisdiction no writ of summons can be issued against him without leave of the Court or a Judge (*h*), which may be allowed whenever—

When writ may
be issued
against defen-
dant out of
jurisdiction.

- (a.) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or
- (b.) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or
- (c.) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or
- (d.) The action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of England; or
- (e.) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or
- (f.) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is sought to be

(*h*) Order XI. r. 4.

prevented or removed, whether damages are or are not also sought in respect thereof; or

(g.) Any person out of the jurisdiction is a necessary or proper party to an action properly brought against some other person duly served within the jurisdiction.

Neither a Master nor a District Registrar can give leave for service of a writ or notice thereof out of the jurisdiction (*i*).

Special circumstances to be considered when defendant in Scotland or Ireland.

When in any of these cases the defendant is in Scotland or Ireland, and there is any Court there with concurrent jurisdiction, the Court is to have regard to the comparative cost and convenience of proceeding here or there, and particularly in the case of small demands, to the powers and jurisdiction of the Sheriffs Courts or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland (*k*).

Affidavit in support of application.

An affidavit in support of an application to sue a defendant out of the jurisdiction must show; (1) good cause of action to deponent's belief; (2) where the defendant is, or may probably be found; (3) whether he is a British subject or not; (4) the grounds on which the application is made (*l*). When an order is made it names the time for the defendant's appearance (*m*); and if the defendant is neither a British subject, nor in British dominions, notice of the writ, and not the writ itself, is served on him (*n*).

When service may be effected.

Service may be made at any hour of the day or night, and on any day not being a Sunday or *dies non*, such as Christmas Day or Good Friday; a writ, however,

(*i*) Order LIV. r. 12.

(*k*) Order XI. r. 2.

(*l*) *Ibid.* r. 4.

(*m*) *Ibid.* r. 5.

(*n*) *Ibid.* r. 6.

only remains in force for twelve months ; but where it has not been served it may, by leave, be renewed for six months, and so on from time to time, on showing that reasonable efforts have been made to serve it, or for other good reason. This renewal is effected by the writ being marked at the proper office with a seal bearing the date of renewal (*o*). How long writ in force.

Where a writ has been lost leave may be given for a correct copy to be sealed and served in lieu of the original writ (*p*). Loss of writ.

Concurrent writs are sometimes issued (*q*). They are simply duplicate originals, and would only be issued for the sake of expedition, *e.g.*, where there are several defendants residing at different places (as each is entitled, as before mentioned (*r*), to see the original on service), or where it is doubtful where a defendant is residing or is to be found. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service out of the jurisdiction and *vice versa* (*s*). Concurrent writs.

The Court or a Judge may, at any stage of the proceedings, allow the plaintiff to amend the indorsement on his writ of summons in such manner and on such terms as may seem just (*t*), and where the indorsement constitutes in fact the statement of claim, as is hereafter explained (*u*), the provision as to amendment of statement of claim without leave applies—a matter which is dealt with hereafter (*x*). Amendment of writ.

(*o*) Order VIII. rr. 1, 2. The only apparent use in renewing a writ instead of issuing a fresh one is where the debt would, but for the process, be barred by the Statute of Limitations.

(*p*) Order VIII. r. 3.

(*q*) Order VI.

(*r*) Ante, p. 48 ; and note (*o*).

(*s*) Order VI. r. 2.

(*t*) Order XXVIII. r. 1.

(*u*) Post, p. 70.

(*x*) Post, pp. 80-82 ; Order XXVIII. r. 2.

Appearance. Service having been effected, the next step in the action is for the defendant to appear to the writ, which appearance should be entered at the Central Office or the district registry, as the case may be (*y*), within eight days from service, inclusive of day of service, except in the case of writs issued against a defendant out of the jurisdiction, when as already stated the time is fixed by the Court or a Judge on the leave being granted to issue the writ, and varies according to the distance of defendant from England (*z*). By appearance is meant the mode of the defendant bringing himself before the Court, and it simply consists in the defendant in person, or by his solicitor, giving in at the proper office a memorandum in writing dated the day of its delivery, bearing the proper Court stamp, and signifying that he appears, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. At the same time also there must be delivered to the officer a duplicate of the memorandum, which the officer seals with the official seal, showing the date on which it is sealed, and returns to the person entering the appearance, and the duplicate memorandum so sealed constitutes a certificate that the appearance was entered on the day indicated by the seal, and it is dealt with as presently mentioned (*a*). The memorandum of appearance, if the appearance is entered by a solicitor, must contain his place of business; and if entered in London, an address for service not more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice; and if entered in a district registry, an address for service within the district, otherwise the memorandum is not to be received; and if any such address is illusory or fictitious the appearance may be set aside on the application of the plaintiff (*b*). If the writ is

(*y*) Ante, pp. 45, 46.

(*z*) Order XI. r. 5.

(*a*) Order XII. r. 8.

(*b*) Ibid. rr. 10, 11.

issued in London the appearance must be in London also ; if it is issued from a district registry, then, if the defendant resides or carries on business within the district, he must appear there, but if it is issued in the district registry, and he does not so reside or carry on business, he can appear either in London or in the district registry, and in such case, or if when there are several defendants one appears in London, the action then proceeds in London, subject to this, that if the Court or a Judge is satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the district registry, notwithstanding such appearance in London (c). The defendant should, as before stated, appear within the eight days, for in default thereof the plaintiff may proceed to judgment, as mentioned in the next chapter ; but if he does not, he may still appear if the plaintiff has not yet signed judgment (d). It is also necessary that the defendant, Notice of appearance, &c. on the day on which he enters an appearance to a writ of summons, should give notice of his appearance to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either in writing served in the ordinary way at the address for service, or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and it must in either case be accompanied by the sealed duplicate memorandum before referred to (e).

Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all further proceedings are to be thereafter delivered to or served on such solicitor (f). Party suing or appearing in person, and afterwards employing a solicitor.

(c) Order XII. rr. 1, 4-7.

(d) Ibid. r. 22.

(e) Ibid. r. 9.

(f) Order LXVII. r. 7.

Appearance
by partners
sued in firm's
name.

When partners are sued in their firm's name, or where any person carrying on business in the name of a firm is sued in the firm name (*g*), the appearance must be in the individual names or name, but all subsequent proceedings continue in the name of the firm (*h*).

Appearance
by person not
named in writ
in action to
recover land.

Any person not named as a defendant in a writ of summons for the recovery of land, may by leave of the Court or a Judge appear and defend on filing an affidavit shewing that he is in possession of the land by himself or his tenant (*i*). Any person appearing to defend any such action as landlord in respect of property whereof he is in possession only by his tenant, must state in his appearance that he appears as landlord (*k*). If a defendant in appearing to such an action only claims a title to some portion of the lands which are sought to be recovered, he may, in his appearance, or in a notice signed by himself or his solicitor, to be served within four days after appearance, limit his defence to the part in respect of which he desires to defend (*l*).

Limiting de-
fence.

Things a
defendant may
do before
appearance.

Generally a defendant cannot take any step in an action before appearance, but he may, however, without appearance move the Court to set aside service on him of the writ, or to discharge the order authorizing such service (*m*). This might occur where he contends that being out of the jurisdiction of the Court leave to issue the writ has been improperly obtained. A defendant may also pay money into Court before appearance (*n*), or apply to transfer the action to the County Court under the County Court Act, 1867 (*o*).

(*g*) See ante, pp. 49, 50.

(*h*) Order XII. rr. 15, 16. As to execution where defendants are sued in this way, see post, pp. 140, 141.

(*i*) Order XII. rr. 25, 27.

(*k*) Ibid. r. 26.

(*l*) Ibid. rr. 28, 29.

(*m*) Ibid. r. 30.

(*n*) See post, p. 90.

(*o*) See post, p. 100.

Proceedings under the Bills of Exchange Act, 1855 Proceedings under Bills of Exchange Act, 1855.
 (p), though they cannot now take place, should still, however, be referred to. Under that Act, it was enacted that when a bill of exchange or promissory note (which words included cheques) was not more than six months overdue, a writ might be issued, the time to appear to which was to be twelve days, and which writ must be personally served on the defendant, who could not appear thereto as a matter of right, but only by obtaining leave to do so from a Judge within the twelve days limited for appearance, which leave would be granted on his paying into Court the sum indorsed upon the writ, or satisfying the Judge by affidavit that he had some good defence. This leave might be granted on such terms as to security or otherwise as to the Judge might seem fit (q). If the defendant obtained leave and duly appeared, the proceedings went on as in other actions.

The advantage of this Act at the time it was passed Advantage of the Act.
 was great, for it prevented a defendant in such cases from unduly delaying the plaintiff. Under the practice then existing, any defendant by simply appearing could put it upon the plaintiff to proceed throughout all the different stages of the action, which was a great hardship upon a plaintiff where the defendant had no real defence. This was specially apparent in the case of actions on bills, notes, and cheques—hence the Act. However, after the coming into operation of the Judicature Acts, by reason of the provisions of the original Order XIV. which practice is still preserved under Order XIV. of the Rules of 1883 (r), there no longer remained any reason for the special procedure under the Bills of Exchange Act, and it was considered advisable that no more writs should be issued under it. It was therefore provided by the Rules of April,

(p) 18 & 19 Vict. c. 67.

(q) Ibid. s. 2.

(r) See post, p. 64.

1880, that no writs should thereafter be issued under the Bills of Exchange Act and this is still provided in the Rules of 1883 (*s*). It will be observed that the Act is not repealed, and still, therefore, remains in force beyond the High Court of Justice, so that such twelve days' summonses may still be issued from the County Courts.

To return, the defendant having appeared, the pleadings now commence, but prior to considering them the subject of judgment in default of appearance, and applications under Order XIV. just referred to, must be considered, and this is done in the next chapter (*t*).

(*s*) Order II. r. 6.

(*t*) At the commencement of this chapter it was stated that proceedings are commenced by an action, which is strictly correct; but it is advisable here to notice the process of replevin, in which certain steps are taken prior to the action—the subject not being of sufficient importance to justify separate notice in a work like the present. Replevin is the redelivery of goods wrongfully taken from a person, occurring usually in cases of wrongful distress. The *modus operandi* is for the person whose goods are wrongfully taken, to apply in the first instance to the Registrar of the District County Court, and before him enter into a bond with sureties, which is called the replevin bond. If the person desires to commence his action in the High Court, the conditions of the bond are to commence the action within one week, and to prosecute the same with due effect, to prove before the Court that he had good ground for believing either that some question of title was involved, or that the rent or damage exceeded £20, and to return the goods if their return is ordered. If, however, the action is to be commenced in the County Court, the conditions of the bond are only to commence the action within one month, and to prosecute the same with due effect, and to return the goods if their return is ordered. On the bond being given the goods are returned to the person giving it (called the replevisor), and he commences the action, so that the defendant in the action is to a certain extent in the position of a plaintiff in an ordinary action (17 & 18 Vict. c. 125, ss. 22–24; 19 & 20 Vict. c. 108).

CHAPTER II.

JUDGMENT IN DEFAULT OF APPEARANCE, AND APPLICATIONS UNDER ORDER XIV.

THE writ of summons, as has been stated in the last chapter, requires the defendant to enter an appearance within eight days from service. If the defendant does not obey this by appearing, the plaintiff's next step is to proceed on his default, but the courses he can take differ according to the nature of the writ issued, and therefore each must be considered separately.

Firstly.—*The writ may have been indorsed for a* Non-appearance to writ for liquidated demand, either specially or otherwise. In this case, if the defendant does not appear within the eight days, the plaintiff may file an affidavit of service, and of the indorsement of the fact of the service on the writ within three days afterwards, and on this he may at once sign final judgment and issue execution; if there are several defendants, and some one or more only do not appear, he may sign final judgment and issue execution against the defendant or defendants not appearing, and proceed with his action against the other or others appearing. This judgment may be for any sum not exceeding the sum indorsed on the writ, with interest at the rate specified, or if no rate specified, at the rate of five per cent. per annum to the date of the judgment, and costs (u).

By a final judgment is meant one which is complete, Final and interlocutory and requiring no further act to be done to perfect it ; judgment.

(u) Order XIII. rr. 2-4.

an interlocutory judgment is one requiring something further.

Judgment by default in district registry.

When a defendant fails to appear to a writ issued out of a district registry, and he had the option of appearing there or in London (*x*), judgment by default of appearance cannot be entered until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought in due course of post to have reached him (*y*).

Non-appearance in actions for unliquidated damages.

Secondly.—*The writ may be not for a debt or liquidated demand, but for detention of goods and pecuniary damages, or either of them.* Here, on non-appearance within the eight days, the plaintiff may, on affidavit of service, at once sign interlocutory judgment, and then issue a writ of inquiry with a view to final judgment; or instead of a writ of inquiry the damages may be ascertained in any way in which the Court or Judge may direct (*z*), *e.g.*, by referring the matter to one of the Masters; and in particular it is provided that if the question is one of an amount which is substantially a matter of calculation, it is not to be necessary to issue a writ of inquiry, but a reference to an officer of the Court is the proper course (*a*). In all cases in which damages are to be assessed (whether at the trial or after interlocutory judgment), they are to be assessed, not merely down to the date of the issuing of the writ, but down to the time of the assessment (*b*).

Date to which damages to be assessed.

Several defendants.

In the case of a writ coming under this second head, where there are several defendants, of whom some only appear, the plaintiff may sign interlocutory judgment against those not appearing, and the

(*x*) See ante, pp. 45, 46.

(*y*) Order XIII. r. 11.

(*z*) Ibid. r. 5.

(*a*) Order XXXVI. r. 57.

(*b*) Ibid. r. 58.

damages or value of the goods may be assessed against them at the same time as the trial of the action against the other defendants, unless otherwise ordered (c).

Where the writ is indorsed so as partly to come under this second head and partly under the first, and any defendant fails to appear, the plaintiff may enter final judgment for the liquidated amount and costs, and interlocutory judgment for the residue, and may proceed as before detailed with regard to each separate part (d). Where writ indorsed for debt and for damages, &c.

A writ of inquiry is a writ issued to a sheriff commanding him to summon a jury and assess the amount of the damages. The under-sheriff usually presides at the assessment, and after the verdict is given the sheriff's return to the writ is made, and after four days final judgment may be signed, unless the officer who presided certify that in his opinion judgment ought not to be entered until the defendant has had an opportunity to apply to the Court to set the finding aside and grant a new writ of inquiry (e). A notice of executing the writ of inquiry must be given to the defendant, or if he has appeared by solicitor, then to his solicitor, and the notice must be of the same length of time as an ordinary notice of trial (f). If it is intended to attend the inquiry by counsel, notice to that effect should also be given, otherwise the costs of counsel will not be allowed. At the hearing of the inquiry all the plaintiff has to prove, or the defendant is permitted to controvert, is the amount of the damages, for the cause of action is admitted (g). Writ of inquiry.

An instance of a case for a writ of inquiry would

(c) Order XIII. r. 6.

(d) Ibid. r. 7.

(e) 1 Wm. 4, c. 7, s. 1.

(f) Ten days.

(g) Arch. Pr. 13th ed. pp. 810-813. See also the provision of Order XXXVI. r. 56.

be if a defendant in a breach of promise case or in any action of tort could not deny the promise or the doing of the tort, but yet wished to be heard on the question of the amount of damages to be awarded. He might adopt the course of not appearing to the writ in the first instance, but letting the plaintiff sign interlocutory judgment in default of appearance, and then appearing on the assessment of damages.

Non-appearance in action to recover land.

Thirdly.—The writ may be for the recovery of land. Here if the defendant does not appear within the eight days, or appearing limits his defence to part only of the land (*h*), the plaintiff on affidavit, as in the other cases, may sign judgment for the land or the part thereof to which the defence does not apply (*i*); and where the plaintiff has in addition indorsed a claim for mesne profits (*k*), arrears of rent, or damages for breach of contract, the plaintiff may as to them proceed as already pointed out in respect of money claims indorsed (*l*).

A claim for penalty on a bond.

Where an action is for a penalty on a bond (*m*), and the defendant does not appear, the proper course for the plaintiff to take is to assign breaches of the bond by delivering a suggestion thereof to the defendant or his solicitor, and then issuing a writ of inquiry before the sheriff to assess the damages (*n*).

Letting a defendant in to appear notwithstanding judgment.

In some cases a defendant may, by oversight or from some other reason, have omitted to appear to a writ within the proper time, and the plaintiff may have accordingly signed judgment. Notwithstanding this, the Court or a Judge has power to set aside or vary

(*h*) See ante, p. 56.

(*i*) Order XIII. r. 8.

(*k*) Mesne profits are intermediate profits; that is, profits which have been accruing between two given periods; Brown's Law Dictionary, 2nd ed. p. 343, tit. "Mesne."

(*l*) Order XIII. r. 9.

(*m*) 8 & 9 Wm. 3, c. 11. s. 8.

(*n*) 3 & 4 Wm. 4, c. 42, s. 16; Order XIII. r. 14.

such judgment upon such terms as may be just (*o*), but this is a power in practice only exercised if the defendant can shew a good defence on the merits, and it will usually be on the terms of his paying the costs of the judgment obtained against him by reason of his default, and other terms may be imposed upon him, as he is only let in to defend by the leniency of the Court.

When a defendant who has not appeared is an infant or person of unsound mind not so found by inquisition, the plaintiff cannot sign judgment as in ordinary cases, but he must apply to the Court or a Judge that some proper person may be assigned guardian by whom such infant or person of unsound mind may defend the action. In support of such an application he must shew that the writ was duly served, and that after the time for appearance, and at least six days before the hearing, notice of such application was served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time the writ was served; and also, if an infant, served upon or left at the dwelling-house of the father or guardian of such infant, unless at the hearing of the application this latter point is dispensed with (*p*).

A judgment by default is dated as of the day on which the requisite documents are left with the proper officer for the purpose of the entry of the judgment, and the judgment takes effect as from that date (*q*).

Defendants often appear to actions notwithstanding that they may not have any real defence, for the purpose of gaining time or for other reasons. Under the old practice, before the Judicature Acts, this frequently worked great injustice to plaintiffs, for it was necessary

(*o*) Order XIII. r. 10.
 (*p*) Ibid. r. 1.
 (*q*) Order XLI. r. 4.

Order xiv.

to go on through all the pleadings and ultimately have the action tried before judgment could be obtained. This is so, and necessarily so, still in actions for unliquidated demands, for there at any rate the question of amount may be always in dispute; but a very important practice in cases of liquidated demands is now allowed (*r*). This is by proceeding under Order xiv. (*s*), by which it is provided that when a defendant appears to a writ of summons specially indorsed (*t*), the plaintiff may on affidavit verifying the cause of action, made either by himself or any other person who can swear positively thereto, call on the defendant to shew cause why the plaintiff should not be at liberty to sign final judgment for the amount indorsed on the writ with interest (if any) or for the recovery of the land (with or without rent or mesne profits), as the case may be, and costs. This application is made by summons returnable not less than four clear days after service, and a copy of the affidavit on which it issues, and any exhibits thereto, must be served with it. On the return of the summons the Court or a Judge may, unless satisfied by affidavit that the defendant has a good defence to the action on the merits, or that under the circumstances the defendant ought to be allowed to defend, or unless, instead, in actions for the recovery of money, the defendant offers to bring into Court the amount indorsed on the writ, make an order empowering the plaintiff to sign judgment accordingly, notwithstanding the defendant's appearance. The Master may, if he think fit, also order the defendant, or in the case of a corporation any officer thereof, to attend and be examined on oath, or to produce any leases, deeds, books, or documents

(*r*) As to the former proceedings under the Bills of Exchange Act, 1855, see ante, p. 57.

(*s*) The Order xiv. referred to is of course contained in the new Rules of 1883. It is in substance the same as the old Order xiv. It will be noticed, however particularly, that the time to elapse between service and return of the summons is four days instead of two days, as before.

(*t*) As to when writ may be specially indorsed see ante, p. 47.

or copies of or extracts therefrom. The plaintiff then, in pursuance of this order, signs judgment and taxes his costs (*u*). The ordinary and usual costs allowed in such a case on taxation will be found in the Appendix. . If it appears that, although there is a defence to part of the plaintiff's claim, to another part there is not, judgment may be forthwith given for the part to which there is no defence, and one defendant may be allowed to defend, while judgment may be given against another. Practically on an application under Order XIV., the Master may adopt one of three courses viz. (1.) He may order judgment; (2.) He may refuse the application, giving to the defendant unconditional leave to defend; or (3.) He may give defendant leave to defend on terms of paying money into Court. It may be noticed that as a general rule the Masters do not receive affidavits in reply; they act simply on the plaintiff's affidavit filed in the first instance and the defendant's affidavit in opposition; they have, however, a discretion on the point (*y*).

A party may notwithstanding his appearance at any time consent to judgment, but when a defendant has appeared by solicitor no order for entering judgment can be made by consent except through the solicitor (*z*); and when the defendant has appeared in person no such order can be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor (*a*).

(*u*) Order XIV. rr. 1-6.

(*y*) *Rotherham v. Priest*, 49 L. J. Q. B. 104.

(*z*) Order XII. r. 9.

(*a*) *Ibid.* r. 10.

CHAPTER III.

PROCEEDINGS FROM APPEARANCE TO THE CLOSE OF
THE PLEADINGS.

The object of pleadings. THE pleadings in an action consist of the statements of the plaintiff and defendant respectively, and have for their object the showing the Court and jury the questions in issue between the parties and the facts on which they respectively rely.

General points as to pleadings. Before proceeding to consider these pleadings in detail it will be well to observe some points affecting them all generally. It has been before noticed (*b*) that under the practice prior to the Judicature Acts the pleadings were couched in technical language involving considerable repetition, and often on account of this, running to considerable length, and these were points that could well be amended. Pleadings are now to be as brief as the nature of the case will admit of (*c*), and to state as concisely as may be the material facts on which the party pleading relies, but not the evidence by which they are to be proved; such statement being divided into paragraphs numbered consecutively, and each paragraph containing as nearly as may be a separate allegation, and dates, sums, and numbers are to be expressed in figures and not in words (*d*). They are to be printed, unless containing less than ten folios (*e*), when they may be either written or printed,

(*b*) Ante, p. 5.

(*c*) Order xix. r. 2.

(*d*) Ibid. r. 4.

(*e*) A folio consists of seventy-two words, every figure being counted as a word (Order 65, rule 27 (14)).

or partly one and partly the other (*f*); and are served by being delivered at the address for service, or if no appearance has been entered they are delivered by being filed with the proper officer (*g*). Service of pleadings, notices, summonses, orders, rules, or other proceedings in the course of an action must be effected before 6 P.M., and on Saturdays before 2 P.M., otherwise service will be deemed to have been effected on the following day, or in the case of Saturday on the following Monday (*h*), and no pleading can be delivered or amended during the Long Vacation except by order (*i*). Pleadings must be marked on the face with the date when delivered, and the reference to the action (*k*), the Division to which, and the Judge (if any) (*l*) to whom assigned, the title of the action (*m*), the description of the pleading, and the name and place of business of the solicitor and agent (if any), or the name and address of the person delivering the same, if acting in person (*n*); and in a pleading denying any allegation in a previous pleading it must not do so evasively, but must answer the point in substance, and generally a fair and substantial answer must be given (*o*). It is not sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged by a defendant by way of counterclaim, but each party must deal specifically with each allegation of fact of which he does not admit the truth, except damages (*p*), which are always to be deemed put in issue

(*f*) Order XIX. r. 9.

(*g*) Ibid. r. 10.

(*h*) Order LXIV. r. 11.

(*i*) Ibid. r. 4.

(*k*) That is, the year when issued, the first letter of the plaintiff's name, and the number of the writ in the particular Division, thus—1883. H. No. 150.

(*l*) This would only be in the Chancery Division. In the Division, the practice of which is now being considered, the Judge is never named.

(*m*) That is, the names of the plaintiff and defendant, thus: Between A. B. plaintiff and C. D. defendant.

(*n*) Order XIX. r. 11.

(*o*) Ibid. r. 19.

(*p*) Ibid. r. 17.

unless expressly admitted (*q*). Every allegation of fact in a pleading not denied specifically, or by necessary implication, or stated in the pleading not to be admitted, is to be taken to be admitted, except or against an infant, lunatic, or person of unsound mind not so found by inquisition (*r*), and any condition precedent the performance or occurrence of which is intended to be contested must be distinctly specified in the pleading of the defendant or plaintiff as the case may be, and subject thereto an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading (*s*). Generally, also, each party must allege all such facts not appearing in the previous pleading as he means to rely on, or which, if not raised on the pleadings would be likely to take the opposite party by surprise, or would raise new issues of fact not arising out of the pleadings—*e.g.*, fraud, or the Statute of Limitations (*t*). When a contract is alleged in any pleading a bare denial of the contract by the opposite party is construed only as a denial of the making of the contract in fact, and not of its legality or its sufficiency in law, whether with reference to the Statute of Frauds or otherwise (*u*).

Claim for
general relief
in pleadings.

Every pleading claiming any relief must state specifically the relief sought, either simply or in the alternative, and it is not necessary to ask for general or other relief, which may always be given as the Court or Judge may think just, to the same extent as if it had been asked for (*x*). Any distinct claims or complaints are to be stated, as far as may be, separately and distinctly (*y*).

Instances of
the shortening
of pleadings.

On the point that pleadings are to be stated as concisely as can be, the following instances may be noticed.

-
- (*q*) Order **xxi.** r. 4.
 - (*r*) Order **xix.** r. 13.
 - (*s*) *Ibid.* r. 14.
 - (*t*) *Ibid.* r. 15.
 - (*u*) *Ibid.* r. 20.
 - (*x*) Order **xx.** r. 6.
 - (*y*) *Ibid.* r. 7.

Wherever the contents of any document are material it is sufficient in any pleading to state its effect as briefly as possible, without setting out the whole or any part thereof, unless the precise words of the document or any part thereof are material (*z*). Where in any pleading it is necessary to allege malice, fraudulent intention, or other condition of the mind of any person, it is sufficient to simply allege the same as a fact without setting out the circumstances from which the same is to be inferred (*a*). When it is material to allege notice it is sufficient to simply allege it as a fact unless the form or precise terms of such notice are material (*b*). When any contract is to be implied from a series of letters or conversations, it is enough to allege such contract as a fact, and refer to such conversations or letters without setting them out in detail (*c*). No person need state in his pleading a fact presumed by the law in his favour, or as to which the burden of proof lies on the other side, unless the same has first been specifically denied; *e.g.*, consideration for a bill of exchange where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim (*d*).

Forms of pleadings are given in Appendices C, D, ^{Forms of} and E to the Rules of 1883, which are to be used ^{pleadings.} when applicable, and in other cases such forms are to be used as near as applicable, and any costs occasioned by prolixity are to be disallowed (*e*). Where in any plead- ^{Particulars in} ing a party relies on misrepresentation, fraud, breach of ^{certain cases.} trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in such forms, particulars (with date and items if necessary) are to be stated in the

(*z*) Order XIX. r. 21.

(*a*) Ibid. r. 22.

(*b*) Ibid. r. 23.

(*c*) Ibid. r. 24.

(*d*) Ibid. r. 25.

(*e*) Ibid. r. 5. See also a set of specimen pleadings in Appendix hereto.

Signature of
pleadings.

pleading, provided that if such particulars are of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading (*f*), and in every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by way of defence or admission of any other cause of action which is pleaded, the same is not to be alleged in the pleadings (*g*). The signature of counsel to a pleading is not necessary, but where pleadings have been settled by counsel or by a special pleader they are to be signed by him, and if not so settled they are to be signed by the solicitor or by the party if he sues or defends in person (*h*). No technical objection is to be raised to any pleading on the ground of any alleged want of form (*i*).

Statement of
claim.

The first pleading in an action is the Statement of Claim by the plaintiff (*j*), and the delivery of any statement of claim is to be regulated as follows :

(*a.*) Where the writ is specially indorsed under Order III. Rule 6, no further statement of claim shall be delivered, but the indorsement on the writ shall be deemed to be the statement of claim :

(*b.*) Subject to the provisions of Order XIII. Rule 12, as to filing a statement of claim when there is no appearance, no statement of claim need be delivered unless the defendant

(*f*) Order XIX. r. 6.

(*g*) Order XX. r. 8.

(*h*) Order XIX. r. 4. Prior to the Judicature Acts Bills of Complaint in Chancery had to be signed by counsel. Under the Judicature Acts and Rules no signature of counsel was necessary to any pleading; but the practice usually observed has been for counsel to sign pleadings prepared by them in the Chancery Division. The idea of the above-lamed provision is of course that the Judge may see who is responsible for the pleading, and may be described as a sort of *in terrorem* provision.

(*i*) Order XIX. r. 26.

(*j*) See specimen form in Appendix hereto.

at the time of entering appearance, or within eight days thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered:

- (c.) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within five weeks from the time of the plaintiff receiving such notice:
- (d.) The plaintiff may (except as in (a.) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards, either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than six weeks after the appearance has been entered, unless otherwise ordered by the Court or a Judge:
- (e.) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court or a Judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper.

The plaintiff in his statement of claim may specify *Place of trial*. where the action is to be tried, and if he does not state any place the trial is to be in Middlesex—that is, at the Royal Courts of Justice (*k*). When under Order III. Rule 6, the indorsement constitutes the statement of claim, the place of trial can be specified in the

(*k*) Order xx. r. 6; Order xxxvi. r. 1. As to changing the place of trial see post, pp. 101, 102.

indorsement (*l*), and in other cases in which there is no statement of claim delivered or required, the plaintiff may within six days after the appearance of the defendant serve a notice stating the place of trial (*m*).

Statement of claim may go beyond indorsement on writ.

Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ (*n*).

Default in delivery of statement of claim.

If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may at the expiration of that time apply to dismiss the action with costs for want of prosecution, and on the hearing of such application, if no statement of claim shall have been delivered, the action may be dismissed accordingly, or such other order may be made on such terms as the Master shall think just (*o*).

Statement of defence.

The next pleading is the statement of defence by the defendant, which must be delivered within ten days (*p*) from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last (*q*). A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within ten days after his appearance (*r*), and where leave has been given to a defendant to defend under Order XIV. (*s*), he must deliver his statement of defence within such time as shall be limited by the order giving him liberty to defend, or if no time is thereby limited, then within eight days after the order (*t*).

In actions for a liquidated demand in money (*u*) a

(*l*) See Forms in Appendix A to Rules of 1883.

(*m*) Order xxxvi. rule 1.

(*n*) Order xx. r. 4.

(*o*) Order xxvii. r. 1.

(*p*) Instead of eight days as before. See specimen form in Appendix hereto.

(*q*) Order xxi. r. 6.

(*r*) Ibid. r. 7.

(*s*) Ante, pp. 64, 65.

(*t*) Order xxi. r. 8.

(*u*) Order iii. r. 6.

mere denial of the debt is inadmissible (*x*), and in actions on bills, notes, or cheques, a defence in denial must deny some matter of fact—*e.g.*, the drawing, making, indorsing, accepting, presenting, or notice of dishonour of the instrument (*y*). In actions comprised in Order III. Rule 6 (*z*) Classes A and B, a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods sold the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received it must deny the receipt of the money or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff (*a*). If it is desired to deny the plaintiff's right in some representative capacity, or to deny the constitution of any alleged partnership firm, it must be done specifically (*b*).

There are many Acts of Parliament which entitle or permit a defendant to plead the general issue of "not guilty" only, and to give any special matter in evidence without specially pleading the same (*c*). Such pleas are still allowed, but if a defendant so plead he may not plead any other defence to the same cause of action without special leave (*d*); and where by virtue of some statute special matter may be given in evidence under a plea simply of the "general issue," and the defendant intends to avail himself thereof, he must insert in the margin of his pleading the words, "by statute," together with the reference to the statute in question, and specifying whether it is a public or private Act, otherwise such defence is taken not to have been pleaded by virtue of any Act of Parliament (*e*).

(*x*) Order XXI. r. 1.

(*y*) Ibid. r. 2.

(*z*) See ante, p. 47.

(*a*) Order XXI. r. 3.

(*b*) Ibid. r. 5.

(*c*) *E.g.*, by 21 Jac. 1. c. 4, sect. 1, "not guilty by statute" may be pleaded in penal actions.

(*d*) Order XIX. r. 12.

(*e*) Order XXI. r. 19.

Costs may be given.

Notwithstanding a defendant may succeed in an action, and thus get the general costs of it, if by his defence he has put the plaintiff to proof of facts which in the opinion of the Court or a Judge ought to have been admitted, the Court may make such order as to the extra costs occasioned thereby as shall be just (*f*). Care should therefore be taken not to put unnecessary points in issue by the statement of defence.

Set-off and counter-claim.

If a person who is sued has himself some claim against the party suing him, he may set this off by way of counter-claim, *even although sounding in damages*; and such set-off or counter-claim has the same effect as a statement of claim in a cross-action, so as to enable the Court to pronounce a final judgment in the same action both on the original and on the cross-claim; but the Court or a Judge, if of opinion that such counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, may refuse to allow the defendant to avail himself thereof, or may make such order as may appear just (*g*). Any defendant seeking to rely upon any grounds as supporting a right of counter-claim must in his statement of defence state specifically that he does so by way of counter-claim (*h*).

Counter-claim may be continued though plaintiff's action stayed.

If in any case in which the defendant sets up a counter-claim the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with (*i*).

Alteration in previous rule as to set-off.

The alteration in the former practice made by the Judicature Acts and Rules, and continued by the new Rules of 1883, is very great, as prior to the Judicature Acts a set-off could only be allowed if liquidated, or of such a nature as might be rendered liquidated without a verdict for the purpose; now a claim merely

(*f*) Order XXI. r. 9.

(*g*) Order XIX. r. 3; Order XXI. rr. 15, 17.

(*h*) Order XXI. r. 10.

(*i*) *Ibid.* r. 16.

resting in damages may be allowed. Formerly also a set-off could only be allowed to the extent of the plaintiff's claim: now it may go beyond that, and the result of the action be a verdict for a balance for the defendant against the plaintiff.

No defence is now allowed to be pleaded in abatement (k). A plea in abatement, or dilatory plea, was one of some matter not material to the merits of the proceeding, but technically necessary or proper—*e.g.*, to the jurisdiction, or on account of the death of one of the parties, marriage of a female party &c. (l). Another point of old practice prior to the Judicature Acts, which may be mentioned, was a new assignment, which occurred where from the very general terms of the declaration the defendant was led to apply his plea to a different matter from that which the plaintiff had in view (m). No new assignment is now necessary or is to be used, but everything which was formerly alleged by way of new assignment may be introduced by way of amendment of the statement of claim, or by way of reply (n). No pleas in abatement,
or new assignments.

If the defendant does not within the proper time put in his statement of defence, the next step by the plaintiff is to proceed on his default, and in the same way as we have seen that the plaintiff's course when the defendant does not appear to the writ differs according to the nature of the claim (o), so also here the course differs according to what the plaintiff is suing for. Default in delivery of defence.

Firstly. If the plaintiff's claim is only for a debt or liquidated demand, and the defence is not delivered within the time allowed, the plaintiff may at once sign final judgment and issue execution against him, or if there are several defendants against any one of them making default (p). Where action for a liquidated demand.

(k) Order XXI. r. 20.

(l) Brown's Law Dict. 2nd ed. p. 3, tit. "Abatement, Pleas in."

(m) Ibid. p. 363, tit. "New Assignment."

(n) Order XXIII. r. 6.

(o) Ante, pp. 59–62.

(p) Order XXVII. rr. 2, 3.

Where action
for an un-
liquidated
demand.

Secondly. If the action is for detention of goods and damages, or either of them, interlocutory judgment may be signed and a writ of inquiry issued (*q*); and if there are several defendants, and only one makes default, interlocutory judgment may be signed as to that one, and the action proceeded with against the others, no separate writ of inquiry being issued, but the damages as to all being assessed at the trial, unless otherwise ordered (*r*).

Where claim
for debt, and
for damages,
&c.

Where the plaintiff's claim comes partly under this second head and partly under the first, and any defendant make such default as aforesaid, the plaintiff may enter final judgment for the liquidated amount and interlocutory judgment for the residue, and proceed as before detailed with regard to each separate part (*s*).

When action
for recovery of
land.

Thirdly. If the action is for the recovery of land the plaintiff may sign judgment to recover possession, and for his costs (*t*), and where he has in addition claimed mesne profits, arrears of rent, or double value or damages, the plaintiff may as to them proceed as already pointed out in respect of money claims (*u*).

Course where
defence goes
only to part
of claim.

If in any of the foregoing cases a defence is put in which goes only to part of the claim, the plaintiff may by leave enter judgment, final or interlocutory as the case may be, for the part unanswered, provided that it consists of a separate cause of action, or is severable from the rest, and provided also that, where there is a counter-claim, execution on any such judgment shall not issue without leave (*x*).

Costs.

When the plaintiff signs final judgment in any of the above cases, it is signed first with the costs in blank; they are then taxed by a Master, and filled in the judgment.

(*q*) As to a Writ of Inquiry see ante, p. 61.

(*r*) Order xxvii. rr. 4, 5.

(*s*) Ibid. r. 6.

(*t*) Ibid. r. 7.

(*u*) Ibid. r. 8.

(*x*) Ibid. r. 9.

The next pleading is the reply by the plaintiff (y), Reply, which must be delivered within twenty-one days after the statement of defence, or if there are several defendants then within that time after the last of the statements of defence shall have been delivered (z). This is most usually merely a joinder of issue—that is, a traverse or denial and putting in issue of the facts alleged by the defendant in his defence, and if this is so here the pleadings terminate (a). No pleading subsequent to the reply is allowed, except a joinder of issue, without leave of the Court or a Judge, and then upon such terms as the Court or a Judge shall think fit (b). Such subsequent pleading is styled a rejoinder.

Joinder of issue.

A case in which joinder of issue is usually necessary after reply is where the defendant's statement of defence contains also a counter-claim, for this being in effect equivalent to a statement of claim in a cross-action, the plaintiff's reply is equivalent to his statement of defence therein, and the subsequent joinder of issue by the defendant to his reply. It is provided that where a counter-claim is pleaded a reply thereto shall be subject to the Rules applicable to the statement of defence (c). It is not often that any pleading beyond this can be required. Any pleading subsequent to reply must be delivered within four days after the delivery of the previous pleading, unless otherwise ordered (d).

When pleading subsequent to reply necessary.

If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading within the period allowed for that purpose, the pleadings are to

Default in delivery of reply or subsequent pleading.

-
- (y) See specimen form in Appendix hereto.
 (z) Order XXIII. r. 1.
 (a) Order XIX. r. 18.
 (b) Order XXIII. r. 2.
 (c) Ibid. r. 4. This Rule is not clear. Does it mean that the time is to be the same as for putting in a defence? I do not think so; but that being a reply there will be the full twenty-one days to plead to the counter-claim.
 (d) Order XXIII. r. 3.

be deemed to be closed at the expiration of that period and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue (e).

When the pleadings are closed.

As soon as either party has simply joined issue upon any pleading of the opposite party without adding any further or other pleading thereto, or has made default as mentioned in the last preceding paragraph, the pleadings as between such parties are deemed to be closed (f), and their object being attained the cause is ready to go to trial; but if it is made to appear to a Judge that the pleadings do not sufficiently define the issues of fact in dispute between the parties, he may direct them to prepare issues to be tried, to be settled by the Court or a Judge if they differ on them (g).

No demurrer now allowed.

A demurrer was a step very often had recourse to during the pleadings, but now, under the Rules of 1883, no demurrer is to be allowed (h). It was the formal mode of disputing the sufficiency in law of the pleading of the other side (i), occurring when the plaintiff or defendant, as the case might be, admitted, for the sake of argument, that what was stated in his opponent's pleading was true, but denied that it gave him any good ground of action or defence. Thus, take the case of an indorsee for value of a bill of exchange suing the acceptor, who simply sets up in his defence that he received no value. This, though it would have been a good defence to an action brought against him by the drawer, is no defence to the action of

(e) Order xxvii. r. 13. This Rule directly reverses the previous practice, which was that the consequence of not replying, &c., was to admit the prior pleading. See hereon *Lumsden v. Winter*, L. R. 8 Q. B. D. 650; 51 L. J. Q. B. 413; 30 W. R. 751.

(f) Order xxiii. r. 5.

(g) Order xxxiii. r. 1.

(h) Order xxv. r. 1.

(i) Brown's Law Dict., 2nd ed. p. 169, tit. "Demurrer."

the indorsee for value, and would have presented a case for a demurrer.

Instead of demurring, a party is to be entitled to raise by his pleading any point of law, and any point so raised is to be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge, on the application of either party, the same may be set down for hearing and disposed of at any time before the trial (*k*). If in the opinion of the Court or Judge the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, defence, set-off, counter-claim or reply therein, the Court or Judge may thereupon dismiss the action, or make such other order therein as may be just (*l*).

Course instead
of demurring.

As a further assistance, instead of a demurrer the Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case, or in case of the action or defence being shewn by the pleadings, to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just (*m*).

Striking out
pleading.

It is specially provided that no action or proceeding shall be open to objection on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right, whether any consequential relief is or could be claimed or not (*n*).

Claim for
judgment de-
claratory only
allowed.

Most defences have existed before action brought; but sometimes a defence may arise only after it has

Defences
arising
pending the
action.

(*k*) Order xxv. r. 2.

(*l*) Ibid. r. 3.

(*m*) Ibid. r. 4.

(*n*) Ibid. r. 5.

been commenced—*(o)*, where after it is brought the defendant puts his defence in bankruptcy. Such a defence although it did not exist when the action was brought may be set up either by the defendant or by the plaintiff or a counter-claim, but if it arises on the defendant's part after statement of defence has been delivered, or after the expiration of the time for delivering the statement of defence, or if it arises on the plaintiff's part after reply has been delivered, it can only be set up within eight days of its having arisen, and by leave of the Court or a Judge *(o)*. Where a defendant has set up any defence that has arisen pending the action the plaintiff may at once confess it, and—as it did not exist when he brought his action—may sign judgment for his costs up to the time of pleading it *(p)*. This practice is similar to the former plea of *prois derwin confitance*, prior to the Judicature Acts. A plaintiff may in his reply to a counter-claim of the defendant, counter-claim in respect of a cause of action accrued after the issue of the writ, but arising at the same time and out of the same transaction as the counter-claim of the defendant *(q)*.

Counter-claim
and set-off in
reply.

Amendment of
pleadings.

Very full powers of amendment of pleadings exist. The Court or a Judge has power at any stage of the proceedings, even at the trial, to allow either party to amend his indorsement of writ, statement of claim, or defence, or reply, in such manner and on such terms as may be just; and all such amendments may be made as may be necessary for the purpose of determining the real question in controversy between the parties *(r)*. With regard to an opponent's pleading, also, the Court or a Judge may order to be struck out or amended any

Striking out
pleadings
scandalous or
embarrassing.

(o) Order XXIV. rr. 1, 2.

(p) Ibid. r. 3.

(q) *Toke v. Andrews*, L. R. 8 Q. B. D. 428; 51 L. J. Q. B. 281; 30 W. R. 659.

(r) Order XXVIII. rr. 1, 6, 12.

matter in such statements respectively which may be scandalous, or may tend to prejudice, embarrass, or delay the fair trial of the action, and may in any case, if they think fit, order the costs of the application to be paid as between solicitor and client (s).

With regard to amendment by a party of his own pleading, this can in some cases be done without leave, viz. :—

When amendments may be made without leave.

1. A plaintiff may once at any time before the expiration of his time to reply, and before replying, or where no defence has been delivered within four weeks from the appearance of the defendant who last appeared, amend his statement of claim, whether indorsed on the writ or not, without any leave (t).

2. A defendant, also, *who has set up in his defence any set-off or counter-claim* may at any time before the expiration of the time allowed him for answering the reply, and before such answer, or in case there is no reply, then at any time before the expiration of twenty-eight days from the filing of his defence, *amend such set-off or counter-claim* without any leave (u). Such amendment, however, made without leave, may on application within eight days of delivery be disallowed if the Court or a Judge considers proper to so disallow it, or it may be allowed on such terms as to costs or otherwise as may be just (x).

When an order for leave to amend is made the pleading must be amended within the time named in the order, or if no time is named, then within fourteen days from the date of the order, otherwise it becomes *ipso facto* void, unless the time is extended (y).

Time to amend under order.

(s) Order XIX. r. 27.

(t) Order XXVIII. r. 2.

(u) Ibid. r. 3. It will be observed that this only applies to amendment of the set-off or counter-claim, and not to the defence itself.

(x) Order XXVIII. r. 4.

(y) Ibid. r. 7.

How amendments made.

Every amended indorsement or pleading must be marked with the date of the order (if any) under which it is amended, and also with the day on which the amendment is made, and be delivered to the opposite party within the time allowed for amending. If the amendments do not exceed one hundred and forty-four words in any one place, they may be made in writing, unless it would render the pleading difficult or inconvenient to read, in which case, or if they exceed the before-mentioned length, the pleading must be reprinted (z).

Pleading to amendments.

Where any party has amended his pleading without leave where entitled to do so, the opposite party should plead to the amended pleading, or amend his pleading within the time he then has to plead, or within eight days from the delivery of the amendment, whichever shall last expire, and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above-mentioned, he shall be deemed to rely on his original pleading in answer to such amendment (a).

Admission.

With a view to saving expense and expediting matters, special provisions are made with regard to admissions of certain facts.

Notice of admission of certain facts.

Any party to a cause or action may give notice by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party (b).

Notice to opponent to admit certain facts.

Any party may not later than nine days before the day for which notice of trial has been given, serve a notice according to a form given in the Rules of 1883, calling on any other party to admit for the purposes of

(z) Order xxviii. rr. 8, 9, 10.

(a) Ibid. r. 5.

(b) Order xxxii. r. 1.

the cause, matter, or issue, any specific fact or facts mentioned in such notice. In case of refusal or neglect to admit within six days after service of such notice, or within such further time as shall be allowed, the cost of proving any such facts shall in any event be paid by the party so neglecting or refusing, unless at the trial the Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge subsequently so order. Any such admissions that may be made are, however, only to be deemed to be made for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion, or in favour of any person other than the party giving the notice. The Court or a Judge is empowered at any time to allow any party to amend or withdraw any such admission on such terms as may be just (*c*). An affidavit of the solicitor or his clerk of the due signature of any admission is to be sufficient evidence thereof (*d*).

Any party may at any stage of the action apply to the Court or a Judge for such judgment or order as he may upon any such admissions of fact be entitled to, without waiting for the determination of any other question, and the Court or a Judge may make such order or give such judgment as may seem just (*e*). Applying on admissions.

Between the appearance and the close of the pleadings in every action various interlocutory applications of more or less importance are invariably made, and other interlocutory steps may be taken. Before, therefore, proceeding further with the direct course of an ordinary action it is necessary to devote some attention to them.

In the Appendix the student will find a complete

(*c*) Order XXXII. r. 4.
 (*d*) Ibid. r. 7.
 (*e*) Order XXXII. r. 6.

set of ordinary and simple pleadings in an imaginary action (f).

Defence in
action for re-
covery of land.

In an action for recovery of land the rules as to pleadings are not quite the same as in other actions, it being provided that a defendant in any such action in possession by himself or his tenant need not plead his title unless his defence is of an equitable nature, but, except in such case, it is sufficient for the defendant to state that he is so in possession, and *it shall be taken to be implied in such statement that he denies or does not admit the allegations of fact contained in the plaintiff's statement of claim*, and he may rely upon any ground of defence he can prove (g). In a recent case, before the Rules of 1883, the plaintiff in his statement of claim stated his title, and the defendant simply alleged in his statement of defence that he was in possession, and the plaintiff contended therefore that his title was admitted. The Court of Appeal, however, and subsequently the House of Lords, held that this was not so, and that the plaintiff must prove his title (h). The Rule on the subject then in force was not so specific as the present one of 1883, as the words above italicized were not in it, so that the point was arguable, which it could hardly have been had it contained them. The decision is, however, still useful as an instance of the application of the Rule on the subject.

(f) See Appendix II. hereto.

(g) Order XXI. r. 21.

(h) *Danford v. McNulty*, L. R. 6 Q. B. D. 645; 50 L. J. Q. B. 294. Confirmed in House of Lords.

CHAPTER IV.

INTERLOCUTORY PROCEEDINGS.

INTERLOCUTORY applications are sometimes made to the Court, sometimes to a Judge or Master in Chambers. When the application is made in Chambers it is done by means of a summons, on which an order is made. When the application is made to the Court it is done by means of a motion (i), and such motions were until lately, in the first instance, very often for a rule *nisi* to be granted, which if granted might afterwards be made a rule absolute. That is to say, that a first application was made *ex parte*, and if a *prima facie* reason was shown for granting what was asked, an order was made for it, unless by a certain day cause was shown against it by the other side. This was a rule *nisi*, which was served on the other side, and if no cause was shown against it, or if, on argument, the Court was still of opinion that what was asked for should be granted, it was then made absolute; if not it was discharged. No motion or application for a rule *nisi* or to show cause is, however, now to be allowed (k).

With regard to motions it is provided (l) that, except where under the old practice before the Judicature Acts any order or rule might be made absolute *ex parte* in the first instance, and except where otherwise provided, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable

(i) Order LII. r. 1.

(k) Ibid. r. 2.

(l) Ibid. r. 3.

or serious mischief, may make an order *ex parte*, upon such terms as to costs or otherwise, and subject to such undertaking (if any) as the Court or Judge may think just; and any party affected by such order may move to set it aside. Two clear days' notice of motion must be given (*m*); and if on the hearing of any motion the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have had notice, the Court or Judge may dismiss the motion or adjourn the same in order that service may be effected on such terms as may seem fit (*n*). The hearing of any motion may also be adjourned from time to time on such terms as the Court or Judge shall think fit (*o*).

Notice of
motion where
no appearance.

A plaintiff is at liberty, without any special leave, to serve any notice of motion or other notice upon any defendant who, having been duly served with a writ of summons, has not appeared within the time limited for that purpose (*p*). The plaintiff may by leave of the Court or a Judge, to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant (*q*).

Serving notice
of motion with
the writ.

Date of order.

Every order that is drawn up is to be dated the day of the week, month and year on which the same was made, unless the Court or a Judge otherwise directs, and shall take effect accordingly (*r*).

Procedure on
summons.

Every application at Chambers not made *ex parte* is made by summons, and the practice observed in the hearing of summonses in this Division is to place them in a list returnable at certain fixed hours (*s*), and according to the special arrangements as to Masters

(*m*) Order LII. r. 5.

(*n*) Ibid. r. 6.

(*o*) Ibid. r. 7.

(*p*) Ibid. r. 8.

(*q*) Ibid. r. 9.

(*r*) Ibid. r. 13.

(*s*) Order LIV. r. 26.

before detailed (*t*), the list distinguishing those which a Master has jurisdiction to hear from those which he has not, and those which are to be attended by counsel from those which are not to be so attended (*u*). At the time named the list is called over and the summonses are heard, but if on the first calling one of the parties is not present, it is, when the list is gone through again, called a second time, and the other party is then entitled to attend the summons *ex parte* on an affidavit of service simply, no affidavit of non-attendance being required or allowed (*x*); and if neither party is present at the second calling, the summons is struck out of the list. Summonses for time are always made returnable at 10.30 and heard in priority to other summonses, and are not placed in any list (*y*).

A summons requires to be served two clear days before the return thereof, unless in any case it shall be otherwise ordered (*z*). Service of
summons.

If on any matter coming before a Master, it appears proper for the decision of a Judge, the Master may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the Master with such directions as he may think fit (*a*). Referring
matter to
Judge.

A summons need not necessarily only refer to one matter, but several matters may be included therein, and all general directions given thereon (*b*); and where at the return of the summons the matters in respect of which it is issued are not disposed of, the parties are to attend from time to time without further summons at Summons may
relate to
several matters.

(*t*) Ante, pp. 23, 24.

(*u*) Order LIV. r. 27.

(*x*) Ibid. r. 5.

(*y*) Ibid. r. 20.

(*z*) Ibid. r. 4. This has been the former practice in the Chancery Division, but in the Queen's Bench Division a summons has hitherto been allowed to be issued and served on one day, returnable for the next. The alteration will probably be found very inconvenient in practice.

(*a*) Order LIV. r. 20. See also as to appeals from decisions in Chambers, post, pp. 111, 112.

(*b*) Ibid. r. 9.

such time or times as may be appointed for the consideration or further consideration thereof (c).

Consequence
of non-attend-
ance on
summons

Where a party not attending, a summons is proceeded with *ex parte*, such proceeding is not to be reconsidered in Chambers unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful default or negligence, and in such case the costs occasioned by his non-attendance are in the discretion of the Judge who, may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or he may make such other order as to such costs as he may think just (d). And where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally (e).

Drawing up
of orders, and
when not to be
drawn up.

Orders when made are drawn up, and sealed, and marked with the name of the Judge or Master by whom made (f), but where they do not embody any special terms, nor include any special directions, but simply enlarge time for taking any proceeding or doing any act, or giving leave (a) for the issue of writs other than a writ of attachment; (b) for the amendment of any writ or pleadings; (c) for the filing of any document; or (d) for any act to be done by any officer of the Court other than a solicitor, it is not necessary to draw up such order unless the Court or a Judge shall otherwise direct, but a production of the Judge's or Master's note or memorandum of such order shall be sufficient. A direction that the costs of any order shall be costs in the cause shall not be deemed a special direction so

(c) Order LIV. r. 8.

(d) Ibid. r. 6.

(e) Ibid. r. 7.

(f) Ibid. r. 29.

as to render it necessary to draw up an order. Any such order not drawn up is perfected by the solicitor of the person on whose application such order is made forthwith giving notice in writing to such person (if any) as would be served with the order were it drawn up (*g*).

A very frequent application is for an extension of the time allowed for taking the different steps in an action, or for filing answer to interrogatories, affidavit of discovery, or the like, and such extension may be granted even after the expiration of the time appointed or allowed (*h*). With regard, however, to obtaining any such time the proper course now is to apply to the other side in the first instance for a consent to the required extension (*i*). If this application is not made the extra cost of the summons for time is not usually allowed, and if the party applied to improperly refuses to consent he is sometimes ordered to pay the extra cost of the summons (*k*).

As a matter of practice it is a rule to always grant one application for time to deliver a pleading, but for any further time some special reason must be shewn, and then the party applying usually has to pay the costs of the application ; and generally the costs of such applications are in the discretion of the Taxing Master (*l*). The Court also, in granting any extension, is not granting anything that the party is entitled to as a right, but is granting a favour, and therefore can always, in giving the time, put the party under any terms ; for instance, on granting a defendant time to deliver his statement of defence, it can do so on the terms that he should take short notice of trial instead of what he is entitled to (*m*), or the best notice of trial that the

(*g*) Order LII. r. 14.

(*h*) Order LXIV. r. 7.

(*i*) Ibid. r. 8.

(*k*) Order LXV. r. 27 (par. 24).

(*l*) Ibid.

(*m*) Post, p. 117.

plaintiff may be able to give, so as to enable him to have the cause tried without delay. Sometimes, too, the order for time is made "peremptory," which does not absolutely preclude the party from again applying, but operates as a strong expression of opinion that the pleading should be delivered, or affidavit filed, as the case may be, within that time.

Payment into Court.

Payment of money into Court in an action is a step that very frequently occurs. An action may be brought against a defendant on a cause of action on which he admits a liability, but not to the extent claimed by the plaintiff; here to go on and contest the question of amount only would certainly entail on the defendant the costs of the action, for the plaintiff would recover something, but if he pays a sum into Court the plaintiff will, if he goes on, be going on at his own risk as to costs if he do not recover more than paid in.

Former practice hereon.

Under the old practice prior to the Judicature Acts, except in a few cases (*n*), money could only be paid into Court when the action was for a debt or liquidated demand, and then only with the plea. This payment into Court with the plea was all that could be desired if the defendant had made a tender before the action, because he could then plead the tender and pay the same amount into Court, and if the plaintiff did not recover more the defendant got the whole costs of the action; but where there was no tender before action, as no tender can be made after action, the defendant had at any rate to pay the costs down to the plea and payment into Court. This was, however, obviated thus:—the defendant would take out a summons to stay the action on payment of the sum he admitted, and if this was not acceded to by the plaintiff, it operated practically as a tender from that time, so as to throw the costs of the action on the plaintiff from then

(*n*) An instance was under 6 & 7 Vict. c. 96; see Indermaur's *Principles of Com. Law*, 353, 354, 3rd ed.

if he did not recover more. This course is not now necessary, and indeed is no longer allowed.

Under the present practice a defendant is at liberty in any action to recover a debt or damages, to pay money into Court at any time before or at the time of delivering his defence, or by leave of the Court or a Judge at any later time, which payment in shall be taken to admit the claim or cause of action in respect of which it is paid in ; or he may, with a defence denying liability (except in actions or counter-claims for libel or slander), also pay money into Court to be subject to the provisions presently mentioned. In an action on a bond under the Statute 8 & 9 Will. III. c. 11, payment into Court is admissible to particular breaches only, and not to the whole action (*o*). Any payment into Court is signified in the defence, and the claim or cause of action in respect of which it is paid in must be specified therein (*p*). And where any defence sets up a tender before action, the money alleged to have been tendered must be brought into Court (*q*). Where, however, a plaintiff claims for distinct pieces of work and labour alleged in separate paragraphs of the statement of claim, a defendant need not in paying money into Court specify in his defence how much is paid in in respect of each head of claim (*r*). If the money is paid into Court at the time of delivering the defence, the fact of payment in appears thereon, and the official receipt is in practice written in the margin of the statement of defence which is delivered, but if it is paid in before, the defendant thereupon serves upon the plaintiff a notice that he has paid in such money, and in respect of what claim (*s*).

Present practice hereon.

Money paid into Court may be paid out to the plaintiff on his request, or to his solicitor on the

When money may be paid out of Court.

(*o*) Order xxii. r. 1.

(*p*) Ibid. r. 2.

(*q*) Ibid. r. 3.

(*r*) *Paraire v. Loibl*, 49 L. J. (Ex.) 481.

(*s*) Order xxii. r. 4.

plaintiff's written authority, unless otherwise ordered, in the following cases, viz. :—

- (a.) When payment into Court is made before delivery of defence ;
- (b.) When the liability of the defendant to the claim in respect of which it is paid in is not denied in the defence ;
- (c.) When payment into Court is made with a defence setting up a tender of the sum paid (t).

With regard to the case (a.) above-mentioned, the plaintiff may within four days after receipt of notice of payment in, and with regard to cases (b.) and (c.)—that is, where payment in is first stated in the defence—then before reply, give notice to the defendant that he accepts it in satisfaction of the causes of action in respect of which it is paid in. He then taxes his costs, and if they are not paid within forty-eight hours signs judgment for them (u).

Position when
money paid
into Court
but liability
denied.

When the liability of the defendant in respect of the claim or cause of action in satisfaction of which the payment into Court has been made is denied in the defence the following rules apply :—

- (a.) The plaintiff may accept the sum in satisfaction of the claim in respect of which it is paid in, and in that event is at liberty to have the money paid out to him, notwithstanding the defendant's denial of liability, whereupon all further proceedings in respect of such claim, except as to costs, shall be stayed ; or the plaintiff may refuse to accept the money in satisfaction, and reply accordingly, in which case the money shall remain in Court ;

(t) Order xxii. r. 5.

(u) Ibid. r. 7.

- (b.) If the plaintiff accepts the money he may serve a notice to that effect, or he may reply accepting the money, and thereupon is entitled to have it paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order ;
- (c.) If the plaintiff does not accept the sum as aforesaid it remains in Court, and is not to be paid out except in pursuance of an order. If the plaintiff ultimately recovers less than such sum, the amount in Court is to be applied so far as is necessary in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim the whole amount is to be repaid to him (x).

Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in, and the costs in all the actions, shall be dealt with in the same manner as in the action tried (y).

A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant (z).

Where before delivery of defence money has been paid into Court under the provisions of Order XIV. (a), the defendant may by his pleading appropriate the whole or any part thereof, and any additional payment, if necessary, to the whole or any specified portion of

(x) Order XXII. r. 6.

(y) Ibid. r. 8.

(z) Ibid. r. 9.

(a) Ante, p. 64.

the plaintiff's claim ; and the money so appropriated is to be thereupon deemed to be money paid into Court at that time (*b*).

Discovery, inspection, &c.

Discovery and inspection of documents are very important interlocutory proceedings. Either plaintiff or defendant in the course of an action may find it necessary or advisable to obtain information as to certain facts from his opponent, or to know what documents he has in his possession relating to the matters in question in the action, and to inspect the same.

Interrogatories

The first of these objects—viz., discovery of facts, is attained by means of interrogatories, which are certain written questions administered to the other party to the action, in accordance with a form given in the Rules of 1883, with such variations as circumstances may require (*c*), and required to be answered by him upon oath. These interrogatories may, in actions of fraud or breach of trust, be delivered by the plaintiff at any time after delivering his statement of claim, or by the defendant at or after the time of delivering his statement of defence, without any order for that purpose, but in any other cause or matter interrogatories can now only be delivered by leave of the Court or a Judge (*d*). Only one set of interrogatories can be delivered to the same party except by special order (*e*).

When interrogatories may be administered.

Interrogatories where defendant a body corporate or company.

If the defendant is a body corporate or joint-stock company, the plaintiff may apply in Chambers for leave to administer interrogatories to any member or officer (*f*).

Striking out or disallowing interrogatories.

In deciding upon any application for leave to deliver interrogatories the Court or Judge is to take into

(*b*) Order XXII. r. 11.

(*c*) Order XXXI. r. 4 ; Form No. 6 in Appendix B to Rules of 1883.

(*d*) Order XXXI. r. 1. A very material alteration in practice, for before these new Rules of 1883 a party had a right in any action to deliver interrogatories.

(*e*) Order XXXI. r. 1.

(*f*) Ibid. r. 5.

account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents (*g*). Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or may be struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous, and any application for this purpose may be made within seven days after service of the interrogatories (*h*); and in addition to this without any application the costs of improper or unnecessarily lengthy interrogatories may be disallowed by the Court or a Judge, or by a Taxing Master (*i*).

If a party only objects to answer some one or more of several interrogatories, on the ground that it or they is or are scandalous or irrelevant, or not *bond fide* for the purposes of the action, or that the matters inquired into are not sufficiently material at that stage of the action, or on any other ground, it is not necessary or proper to take out a summons to strike the same out, but he may take that objection in the affidavit in answer (*j*). Objections to interrogatories.

Interrogatories must be answered by affidavit to be filed within ten days (*k*), and if such affidavit exceeds ten folios it must be printed (*l*). If the party claims any privilege from answering any question (*m*), it, and the grounds of it, should be stated in the affidavit, and generally if the party interrogated omits to answer any interrogatory within the proper time, or the interrogating party considers he has answered the same insufficiently, no formal exceptions are taken, but his proper course is to apply by summons in Chambers, requiring Answers to interrogatories.

(*g*) Order xxxi. r. 2.

(*h*) Ibid. r. 7.

(*i*) Ibid. r. 3.

(*j*) Ibid. r. 6. And see *Gay v. Labouchere*, L. R. 4. Q. B. D. 206; 48 L. J. Q. B. 479.

(*k*) Ibid. r. 8.

(*l*) Ibid. r. 9.

(*m*) As to cases of privilege see *Indermaur's Principles of Common Law*, 3rd ed. 445.

the party interrogated to answer, or to answer further, as the case may be, or a *vivâ voce* examination may be ordered (n).

Answers used
at trial.

The answers to interrogatories are afterwards frequently used at the trial, and in such event any one of the answers may be used as evidence by itself, but if the Judge considers the answers all so connected that one ought not to be used without the other or others he may direct them all to be put in (o).

Discovery of
documents.

Discovery of documents may be obtained by either party to an action by applying by summons, without filing any affidavit in support thereof, asking for an order for his opponent to make an affidavit of the documents which are or have been in his possession or power relating to any matters in question in the action (p). A form of this affidavit of documents will be found in the Appendix, and for a clear understanding of the matter the reader is referred to it (q); and by reference to it, it will be seen that if the party claims that he is privileged from producing any documents either by reason of ordinary privilege or on the ground that the documents are not relevant to the case of the applicant, he must distinctly state it. It will not suffice to deny that it will tend to prove the case, nor will the Court be bound by an affidavit of want of relevancy, but if it see from the materials before it that the documents are relevant it will order an inspection; but except in such a case the denial on oath of the possession of the documents or of their relevancy is conclusive.

Inspection of
documents.
Notice.

Inspection of documents is usually obtained in the following manner:—The party requiring inspection gives to his opponent a notice in writing to produce to

(n) Order xxxi. rr 10, 11. As to consequence of neglect to obey an order to answer, see post, p. 98.

(o) Order xxxi. r. 24.

(p) Ibid. r. 12.

(q) See Appendix II. hereto.

him any document mentioned in a pleading or affidavit of his (*r*). The other party on receipt of this notice should within two days, if the documents are all specified in his affidavit of documents mentioned in the last paragraph, or within four days if not so specified, deliver a notice stating a time within three days at which the documents may be inspected at his solicitor's office ; or, in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground (*s*). If the notice to produce for inspection is not complied with in this way, the party not complying will be prevented from giving such document in evidence, unless he shows the Court that he had sufficient cause for not complying therewith (*t*). In addition to this an application may be made by summons asking for an order for inspection, and an order may be made thereon for inspection in such place and in such manner as the Judge may think fit (*u*). If in any case documents of which inspection is sought do not appear in any pleading or affidavit of the party, the only course is to apply direct for an order for inspection, which the Court may make, having a general power to order the production of any document upon oath at any time (*x*) ; but in this case the application must be supported by an affidavit by some person shewing (1) of what documents inspection is sought ; (2) that the party applying is entitled to inspect ; and (3) that they are in the possession or power of the other party (*y*).

Summons for inspection when possession of documents not admitted.

An order for discovery is not necessarily, though it is usually, granted as of course, and the Court or Judge

Order for discovery not necessarily

(*r*) Order xxx i. r. 15. See Form of Notice given in Appendix II. hereto.

(*s*) Ibid. r. 17. See Form of Notice given in Appendix II. hereto.

(*t*) Ibid. r. 15.

(*u*) Ibid. r. 18.

(*x*) Ibid. r. 14.

(*y*) Ibid. r. 18.

granted as of course.

may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the action, or that for any other reason it is desirable that any issue or question in the cause or matter should be determined before deciding upon the right to discovery or inspection, order that the same be determined first, and reserve the question as to the discovery or inspection (z).

Consequences of disobedience to order for discovery, &c.

The consequence of a person failing to obey any order to answer interrogatories, or for discovery or inspection, is that he is liable to attachment, and also, if a plaintiff, to have his action dismissed for want of prosecution, and if a defendant, to have his defence struck out, and to be placed in the same position as if he had not defended (a). To ground an application for attachment under this rule the service of the order need not be personal, as is necessary to ground an application for attachment in other cases, but service on the party's solicitor is sufficient, unless the party against whom the application is made can show that he has had no notice or knowledge of the order (b), and in that case the solicitor himself is liable to attachment unless he has reasonable excuse (c).

Service of order for discovery.

Interrogatories to sheriff's officer.

In any action against or by a sheriff in respect of any matter connected with the execution of his office, the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery shall be made by the officer actually concerned (d).

Costs of discovery.

The costs of discovery are only to be allowed when such discovery shall appear to the Judge at the trial, or, if no trial, to the Court or a Judge, or shall appear to the Taxing Master, to have been reasonably incurred (e).

(z) Order XXXI. r. 20.
 (a) Ibid. r. 21.
 (b) Ibid. r. 22.
 (c) Ibid. r. 23.
 (d) Ibid. r. 23.
 (e) Ibid. r. 25.

In addition, a further check has been placed on the obtaining of discovery by an important new provision in the Rules of 1883, in the way of security for the costs thereof. It is provided that any party seeking discovery by interrogatories shall, before the delivery thereof, pay into Court to a separate account in the action, to be called "Security for Costs Account," to abide further order, the sum of £5, and if the number of folios exceeds five the further sum of 10s. for every additional folio. Any party seeking discovery otherwise than by interrogatories shall before applying for it pay into Court in like manner the sum of £5, or such further sum as may be ordered. The party seeking discovery must with his interrogatories or order for discovery serve a copy of the receipt for the money so paid in, and time for answering or making discovery shall only commence from the date of such service, and the party shall not be required to answer or make discovery unless and until such payment has been made (*f*) unless otherwise ordered (*g*). Unless the Court or a Judge shall at or before the trial otherwise order, the amount so paid in as aforesaid shall, after the action has been finally disposed of, be paid out to the party who paid it in, on his request, or to his solicitor on such party's written authority, in the event of the costs of the action being adjudged to him; but in the event of the Court or Judge ordering him to pay the costs of the action, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party (*h*).

An application that is not unfrequently made in the course of an action is for the plaintiff or defendant to be ordered to give further and better particulars of his claim or defence, as the case may be, and such order may be made on such terms as to costs or otherwise as may

(*f*) Order xxxl. r. 26.
 (*g*) Ibid. r. 25.
 (*h*) Ibid. r. 27.

Time for
pleading
when particu-
lars ordered.

be just (*i*). Thus, for instance, if the plaintiff is suing an omnibus company for injuries done to him by the negligent driving of one of the defendant's drivers, particulars may be obtained of the time and place of the accident, and of the injuries complained of, and of the expenses and other damage caused the plaintiff. The party at whose instance particulars have been delivered under a Judge's order has, unless the order otherwise provides, the same length of time for pleading after the delivery of particulars that he had at the return of the summons, but except to this extent, an order for particulars does not, unless so ordered, operate as a stay of proceedings or give any extension of time (*j*).

Summons to
refer.

When an action consists entirely or mainly of matters of account, a very proper application is for it to be referred to one of the Masters, on the ground that it cannot be conveniently gone into at the trial (*k*). If this application is not made, as it should be if the action is really a matter of account, it may be referred by the Judge at the trial. In addition to this, under the provisions of the Judicature Act, 1873 (*l*), there are wide powers conferred of referring matters to an official or special referee, and this without consent in any matters requiring prolonged examination of documents or accounts, or any scientific or local investigation (*m*).

Summons to
refer to
County Court.

If an action is brought for a sum on contract not exceeding £50, a defendant may, within eight days from the service of the writ, apply for an order referring the case to the County Court in which the action might have been commenced, and if the plaintiff does not shew good cause to the contrary the order will be

Ordering trial
in County
Court.

(*i*) Order XIX. r. 7. As to delivery of particulars in the first instance see Order XIX. r. 6, ante, pp. 69, 70.

(*j*) Order XIX. r. 8.

(*k*) 17 & 18 Vict. c. 125, s. 3; Arch. Pr. 13th ed. p. 1378. See post, ch. VI. on "Arbitration."

(*l*) Sects. 56, 57.

(*m*) See fully hereon Order XXXVI.; ante, pp. 30, 31.

made and the case tried in the County Court (*n*). In addition, where any action of contract is brought for a sum not exceeding £50, or, though originally exceeding that sum is reduced by payment, admitted set-off, or otherwise, to a sum not exceeding £50, a Judge of the High Court, on the application of either party *after issue joined*, may in his discretion, and on such terms as he shall think fit, order that the cause be tried in any County Court which he shall name. In this case, after trial the Registrar of the County Court certifies the result to the High Court, and judgment in accordance with such certificate is signed in the High Court without taking out a summons for an order to sign judgment (*o*). In such a case as this, subject to the general rules as to costs (*p*), the costs of the action follow the event, unless by the Registrar's certificate of the result of the trial it shall appear that the Judge before whom the action was tried was of opinion that the question of costs ought to be referred to a Judge of the High Court, in which case no costs can be recovered unless ordered by the Court or a Judge (*q*).

It has been stated that the plaintiff in his statement of claim mentions the place where he proposes that the action should be tried, or where no statement of claim delivered or required, gives notice of such place, and in default the trial will be in Middlesex (*r*). An application may always be made to change the place of trial; if made on the part of the plaintiff it will usually be granted on his paying the costs of the application, unless the defendant shews some good ground against changing it, for with the plaintiff rested the right of choice in the first instance; but the application is more usually made on the part of the defendant, and in support of his application he must shew either that to

Summons to
change place
of trial.

(*n*) 30 & 31 Vict. c. 142, s. 7; Jud. Act, 1873, s. 67. As to the jurisdiction of County Courts see post, pp. 144, 145, 205.

(*o*) 19 & 20 Vict. c. 108, s. 26; *Johnson v. Wilson*, 46 L. T. 647.

(*p*) As to which see post, pp. 143-149.

(*q*) Order Lxv. r. 4.

(*r*) Ante, pp. 71, 72.

change it in the way he proposes would be more convenient and a saving of expense, or that by reason of local prejudice or otherwise he cannot obtain a fair trial in the place where it is proposed that the trial should take place (*s*).

Summons to dismiss for want of prosecution.

When a plaintiff does not take some step in an action within the proper time appointed for that purpose a summons may frequently be taken out by the defendant asking that his action may be dismissed for want of prosecution. The chief cases in which such an application can be made are:—(1.) Where the plaintiff does not, when it is necessary, within the time allowed deliver his statement of claim (*t*); (2.) Where he omits to obey an order to answer interrogatories or for discovery of documents (*u*); (3.) Where he omits to give notice of trial within the proper time (*x*).

Summons to hold defendant to bail.

A summons to arrest a defendant in the course of an action—or as it is called to hold a defendant to bail—is an application sometimes though not very often made. By the Debtors Act, 1869 (*y*), it is provided that, where the plaintiff proves at any time before final judgment by evidence on oath to the satisfaction of a Judge (1) that he has good cause of action against the defendant to the amount of £50 or upwards; (2) that there is probable cause for believing that the defendant is about to quit England unless he is apprehended; and (3) that the absence of the defendant from England will materially prejudice him (the plaintiff) in the prosecution of his action, the Judge may order such defendant to be arrested and imprisoned for a period not exceeding six

(*s*) See Order xxxvi. r. 1. It may be well to notice here the change in the practice prior to the Judicature Acts as to the place of trial of an action. The rule was, that if the action was a local one, such as an action for trespass to land, the place of trial to be named by the plaintiff, called the venue, must be where the cause of action arose; but if the action was transitory, such as an action for debt, the plaintiff might lay the venue where he chose. The venue was, however, liable to be changed on grounds the same as may now be shewn to change the place of trial. By the rule quoted in this note the whole law of venue is abolished and the practice stands as stated in the text.

(*t*) Order xxvii. r. 1; ante, p. 71.

(*u*) Order xxxi. r. 21; ante, p. 98.

(*x*) Order xxxvi. r. 12; post, p. 115.

(*y*) 32 & 33 Vict. c. 62.

months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the Court. Where the action is for a penalty or sum in the nature of a penalty other than a penalty in respect of any contract, it is not, however, necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) is to be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison (z).

Any order to arrest under this provision is made *ex parte*, but the defendant may at any time after arrest apply to the Court or a Judge to rescind or vary the order, or to be discharged from custody, or for other relief (a). The security given by the defendant may be a deposit in Court of the amount mentioned in the order for arrest, or a bond to the plaintiff, by the defendant and two sureties or by special leave one surety, or with the plaintiff's consent any other form of security. The plaintiff may within four days after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objection, and in such case the sufficiency of the security is determined by a Master, who has power to award costs to either party. It is the duty of the plaintiff to obtain an appointment for this purpose, and unless he do so within four days after giving notice of objection the security is deemed sufficient (b).

When an action has been commenced in a district registry (c), either party may at any time take out a

Removal of an
action from
district
registry.

(z) Compare this with the subject of the writ of *ne exeat regno*, and the case of *Drover v. Beyer*, subsequently dealt with, pp. 193, 194.

(a) Order LXIX. r. 1.

(b) *Ibid.* r. 2.

(c) As to which see ante, pp. 17, 18.

summons for it to be removed to London, and the Judge may in his discretion make an order removing it (*d*). In the following cases also a defendant may remove such an action as a matter of right—viz. : (1.) Where the writ is specially indorsed, and the plaintiff has not within four days after appearance given notice of an application under Order XIV. (*e*), the defendant may so remove it after the expiration of such four days, and before delivering a defence, and before the expiration of his time for doing so ; (2.) Where the plaintiff has made an application under Order XIV. and failed, the defendant may so remove it after the order giving him leave to defend, and before delivering a defence, and before the expiration of his time for doing so ; and (3.) Where the writ is not specially indorsed the defendant may so remove it after appearance and before delivering his defence, and before the expiration of his time for doing so (*f*). When an action may be so removed of right the removal is effected by the defendant or his solicitor serving upon the other parties to the action, and delivering to the district registrar a notice signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action is removed accordingly. If, however, the defendant giving such notice is merely a formal defendant, or has no substantial cause to interfere in the action, the Court or a Judge may order the action to proceed in the district registry notwithstanding such notice (*g*). The notice of removal must be accompanied by a certificate, signed by the defendant or his solicitor, that his defence has not been delivered, and that the time for delivering it has not expired (*h*).

Where an action is removed from a district registry,

(*d*) Jud. Act, 1873, s. 65 ; Order xxxv. rr. 16, 17. It is also provided that an order may be made transferring an action from London to a District Registry (Order xxxv. r. 17).

(*e*) As to which see ante, p. 64.

(*f*) Order xxxv. r. 13.

(*g*) Ibid. r. 14.

(*h*) Ibid. r. 15.

the defendant must upon its removal give notice to the plaintiff of an address for service in London in all respects, or if the appearance had originally been entered in London (i); and where an action commenced in a district registry is by any means proceeding in London, it is the duty of the district registrar to transmit to the Central Office all original documents filed in the district registry, and a copy of all entries of the proceedings in the books of the district registry (k).

A summons is often taken out in the course of an action asking that the plaintiff may be ordered to give security for costs. Such an application must be made before issue joined, and the defendant does not waive his right to have the security by taking any step in the action, as by obtaining an order for time to deliver his defence or the like with knowledge of the ground for it, provided he apply before issue joined. The mere fact that the plaintiff is a pauper is no ground for getting security: and the following are the chief cases in which the order for security will be made (l):—

(1.) Where the plaintiff is permanently resident abroad, out of the jurisdiction of the Court (m). If, however, there are several plaintiffs, and one of them is resident here, though the others may be abroad, security will not generally be ordered. A mere temporary absence is not sufficient, nor is an involuntary absence, as in the case of persons engaged abroad in the public service. The order for security will be made even although the plaintiff is a king of a foreign state (n); but it will usually be an answer to the application to shew that the plaintiff is in possession of substantial property within the jurisdiction, whether that property be real or

(i) Order xxxv. r. 18; ante, pp. 54, 55.

(k) Ibid. r. 20.

(l) See hereon Arch. Pr. 13th ed. pp. 1139–1145.

(m) Prior to 31 & 32 Vict. c. 54, s. 5, the order for security would have been made against a plaintiff resident in Scotland or Ireland, but not so now, as by that Act provision is made enabling a person obtaining a judgment to register it in Scotland or Ireland and levy on it there.

(n) *Otho, King of Greece v. Wright*, 6 Dowl. 12; *Emperor of Brazil v. Robinson*, 5 Dowl. 522.

personal (*o*), available to process by the defendant. Where the defendant is *quasi* a plaintiff, as in replevin (*p*), and he resides abroad, he may be compelled to find security for costs. He may also be compelled to do so in a feigned issue under the process of interpleader (*q*), but in other actions the defendant will not be compelled to give such security (*r*).

An application for security for costs on the ground of defendant's residence abroad may be founded upon the plaintiff's own admission in his writ to that effect, or on affidavit shewing that it is so. An affidavit of mere belief of the plaintiff's residence being abroad is not sufficient (*s*).

2. Action of
tort with
pauper
plaintiff.

(2.) In any action of tort, on an affidavit that the plaintiff has no visible means of paying his (the defendant's) costs in the action if he fail, the defendant may, unless the plaintiff can satisfy the Judge that he has a cause of action fit to be prosecuted in the High Court, obtain an order for him to give security for such costs, or that it be referred to a County Court to be therein named; and in the event of its being transferred to a County Court the costs of all parties in respect of the proceedings subsequent to the order are allowed according to the scale of costs in use in County Courts, and the costs of the proceedings in the High Court are allowed according to the scale in use there (*t*). This is naturally a very great protection to a defendant in a speculative action of tort, enabling him to get the cause cheaply and quickly disposed of.

3. Plaintiff
bankrupt.

(3.) Trustees of a bankrupt plaintiff may be ordered to give security for costs when they interfere in an action commenced by the bankrupt, and continue it for the benefit of his estate (*u*).

(*o*) *Hamburger v. Poetting*, 47 L. T. 249; 30 W. R. 769.

(*p*) As to which see ante, p. 58, note (*t*).

(*q*) As to which see post, pp. 107, 108.

(*r*) Arch. Pr. 13th ed. p. 1141.

(*s*) *Gardiner v. Harris*, 8 L. R. Ir. 352.

(*t*) 30 & 31 Vict. c. 142, s. 10.

(*u*) 15 & 16 Vict. c. 76, s. 132.

(4.) A plaintiff suing for a penalty under the Merchandise Marks Act may be ordered to give security for costs (*x*). 4. Merchandise Marks Act.

(5.) A limited joint-stock company will be ordered to give security for costs, if it can be shown that if the defendant is successful the assets may be insufficient to pay his costs (*y*). 5. Limited Company.

When security for costs is ordered it may be either a deposit of money in Court or a bond given to the party requiring the security, in such amount as the Court or Judge shall direct (*z*). The day on which an order for security for costs is served, and the time thenceforward, until and including the day on which such security is given, is not reckoned in the computation of time allowed to plead, answer interrogatories, or take any other proceedings in the cause or matter (*a*). How security given, time, &c.

The process of interpleader occurs where claims are made by two or more persons against another who claims no interest in the subject-matter of the dispute himself, and the object of the process is to have the point of who is entitled decided between the antagonistic claimants (*b*). Interpleader.

The cases in which interpleader arises are two : viz. (1) where a person is under liability for any debt, money, goods or chattels for or in respect of which he is or expects to be summoned by two or more parties making adverse claims thereto ; and (2) where conflicting claims are made on a sheriff in possession (*c*) ; and it is not Two cases of interpleader.

(*x*) 25 & 26 Vict. c. 88, s. 24.

(*y*) Ibid. c. 89, s. 69.

(*z*) Order LXV. rr. 6, 7.

(*a*) Order LXIV. r. 6.

(*b*) The statutes relating to interpleader are 1 & 2 Wm. 4, c. 58 ; 1 & 2 Vict. c. 45 ; and 23 & 24 Vict. c. 126, ss. 12-18, and the practice is now regulated by Order LVII. Under the rules of 1883, the Masters have full jurisdiction in interpleader, which is an alteration in practice. (See Order LIV. r. 12, enumerating the various matters in which a Master has not jurisdiction, ante, p. 23, note (*a*)).

(*c*) Order LVII. r. 1.

necessary that the title of the claimants should have had a common origin (*d*). When the applicant is a defendant to an action the interpleader summons may be taken out at any time after service of the writ of summons, and the Court or a Judge may stay all further proceedings in the action (*e*).

Affidavit in support of interpleader summons.

On the hearing of the interpleader summons the applicant must satisfy the Court or a Judge by affidavit or otherwise (1.) That the applicant claims no interest in the subject-matter in dispute other than for charges or costs; (2.) That the applicant does not collude with any of the claimants; and (3.) That the applicant is willing to pay or transfer the subject-matter into Court, or to dispose of it as the Court or a Judge may direct (*f*).

Sheriffs' cases most frequent.

The most frequent cases of interpleader are by sheriffs. Thus, for instance, the sheriff in possession, under a writ of *feri facias* (*g*), receives notice that the goods of which he has taken possession are claimed by some third party under a bill of sale. Here he should first inquire into the matter and then make the application.

Procedure on hearing of summons.

The interpleader summons calls the parties before the Judge, and he may order that any claimant be made a defendant in any action already commenced in respect of the matter, or he may direct an issue to be stated and tried between the parties (*h*), or with the consent of both claimants, or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just (*i*). Where also the ques-

(*d*) Order LVII. r. 7.

(*e*) Ibid. rr. 4, 5, 6.

(*f*) Ibid. r. 2.

(*g*) As to which see post, p. 134.

(*h*) Order LVII. r. 7.

(*i*) Ibid. r. 8.

tion is one of law, and the facts are not in dispute, the Court or a Judge may summarily decide the question, or order that a special case be stated for the opinion of the Court (*k*). If any claimant does not appear on the summons, or if he neglects to comply with any order made after application, an order may be made barring his claim as against the applicant (*l*). No appeal is allowed from any judgment in interpleader, unless by special leave of the Court or a Judge, or the Court of Appeal (*m*).

In the case of a sheriff's interpleader, where any claimant alleges that he is entitled under a bill of sale or otherwise to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just (*n*). Sale of goods
on inter-
pleader.

The ordinary practice as to discovery (*o*) and trial (*p*) apply to interpleader issues (*q*), and the Court or a Judge has a full discretionary power as to costs and other matters (*r*).

A special case (*s*) is a course sometimes resorted to by parties when they are agreed upon the facts of the case, and only desire the decision of the Court upon some point or points of law ; and the parties to an action may at any time concur in stating any such special case, which is printed and signed by the respective parties or their solicitors, containing all necessary facts, and being divided into paragraphs numbered con- Special case.

(*k*) Order LVII. r. 9. As to a special case generally see Order XXXIV. and *infra*.

(*l*) Ibid. r. 10.

(*m*) Ibid. r. 11.

(*n*) Ibid. r. 12.

(*o*) Order XXXI. ; ante, pp. 94-99.

(*p*) Order XXXVI. ; post, p. 115.

(*q*) Order LVII. r. 13.

(*r*) Ibid. r. 15.

(*s*) The special case here referred to must not be confused with a special case which may now still be used as a mode of commencing proceedings, and as to which see post, p. 223.

secutively ; and the Court is at liberty to draw from the facts and documents stated in any such special case any inference whether of fact or law which might have been drawn therefrom if proved at a trial (*t*). In addition to this special case by consent, if it appears to the Court or a Judge that there is in any action a question of law which it would be more convenient to have decided before any evidence is given on an issue of fact, an order may be made for such point of law to be raised for the opinion of the Court by special case or otherwise (*u*). No special case to which a person under disability is a party can be set down for argument without leave of the Court or a Judge, which will only be granted on shewing that the statements in such special case which affect such person under disability are true (*x*). A special case is entered for argument by delivering to the proper officer a memorandum of entry, and also in the case of a person under a disability by producing a copy of the order giving leave to enter the same for argument (*y*).

Agreement as
to special case.

The parties to any such special case may, if they think fit, enter into an agreement in writing, which is not subject to any stamp duty, that on the judgment of the Court being given in the affirmative or negative of the question or questions raised by the special case, a sum of money fixed by the parties, or to be ascertained by the Court, or in such manner as the Court shall direct, shall be paid by one of the parties to the other or others of them, either with or without costs of the action ; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue after such judgment forthwith, unless otherwise agreed, or unless stayed on appeal (*z*).

(*t*) Order XXXIV. rr. 1, 3.

(*u*) Ibid. r. 2.

(*x*) Ibid. r. 4.

(*y*) Ibid. r. 5.

(*z*) Ibid. r. 6.

In addition to a special case there is another course that may be adopted instead of the ordinary mode of procedure, and that is, where the parties to an action are agreed as to the questions of fact to be decided between them, they may by consent and order of the Judge proceed to the trial thereof without formal pleadings—viz., by means of an issue to be entered and tried in the same manner as an issue in an ordinary action (a).

Issues of fact
without plead-
ings.

On some interlocutory applications a direction is given as to the costs of the application—*e.g.*, that they are to be paid by one of the parties, that they are to be “costs in the cause,” or are to be one of the parties’ costs “in any event.” The meaning of the expression “costs in the cause” is simply that the costs of the application follow the result of the general costs of the action, which indeed is usually the case; the meaning of the expression costs “in any event” is that one of the parties is to have the costs of the application in question, whatever may be the ultimate result of the action. Upon any interlocutory application where the Court or a Judge shall think fit to award costs to any party, payment may be directed of a sum in gross in lieu of taxed costs (b).

Costs on in-
terlocutory
applications.

Where an application is made in Chambers to one of the Masters, he may, if he thinks fit, refer the matter to a Judge in Chambers (c). If he does not, nevertheless, any person affected by his order or decision may appeal to a Judge in Chambers within four days, such appeal being by way of indorsement on the summons by the Master at the request of any party, or by notice in writing to attend before the Judge without any fresh summons (d). From thence the party may appeal to a Divisional Court within

Appeals from
decisions in
Chambers.

(a) Order xxxiv. rr. 9–12.

(b) Order lxxv. r. 23.

(c) Order lxxv. r. 20.

(d) Ibid. r. 21.

eight days by motion (e). Any such appeal as aforesaid is no stay of proceedings unless so ordered (f).

Month's notice
of proceeding.

When there has been no proceeding taken in an action for one year, the party, whether plaintiff or defendant, who desires to proceed must first give a calendar month's notice to the other party. A summons on which no order is made is not, but notice of trial countermanded is, deemed a proceeding within this Rule (g). The term "month" occurring here, and generally in legal procedure, means a calendar month (h).

Discontinu-
ance or with-
drawal of
plaintiff's
claim or part
thereof.

A plaintiff not desiring to continue his action may at any time before receipt of the defendant's statement of defence, or after the receipt thereof before taking any other proceeding in the action (save an interlocutory application), by notice in writing, wholly discontinue his action, or withdraw any part or parts of the alleged cause of complaint, but he must then pay the defendant's costs of the action, or, if the action be not wholly discontinued, the defendant's costs occasioned by the matter so withdrawn. Such costs are taxed and such discontinuance or withdrawal, as the case may be, is not a defence to any subsequent action. Subject to this it is not competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may, before or at or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise as may seem fit, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged

The like as to
defendant's
defence.

(e) Order LIV. rr. 23, 24.
(f) Ibid. r. 22.
(g) Order LXIV. r. 13.
(h) Ibid. r. 1.

ground of defence or counter-claim to be withdrawn or struck out, but it is not competent to a defendant to withdraw his defence or any part thereof without such leave (i.)

Any defendant may enter judgment for the costs of the action if it is wholly discontinued against him or for the costs occasioned by the matter withdrawn if the action is not wholly discontinued, in case such respective costs are not paid within four days after taxation (j); and if any subsequent action is brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a Judge may if they or he think fit order a stay of such subsequent action, until such costs shall have been paid (k).

Judgment for costs after discontinuance.

Leave is necessary to compound a penal action, and such leave is not to be given where part of the penalty goes to the Crown unless notice shall first have been given to the proper officer. Any order to compound a penal action must expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action, and where part of the penalty goes to the Crown the Queen's half of the composition must be paid into the hands of the Master of the Crown Office Department of the Central Office for the use of Her Majesty (l).

Compounding penal action.

With regard to various interlocutory applications mentioned in this Chapter, it is not proper to take out separate summonses, but one general summons may be taken out under the new provisions contained in Order 30 of the Rules of 1883. It is provided that in every cause or matter one general summons for directions may be taken out at any time by any party with respect

Summons for direction.

(i) Order xxvi. r. 1. See also as to countermand of notice of trial, Order xxxvi. r. 19, post, p. 117.

(j) Ibid. r. 3.

(k) Ibid. r. 4.

(l) Order l. rr. 13, 14, 15.

to the following matters and proceedings—viz., particulars of claim, defence or reply, statement of special case, discovery (including interrogatories), commissions and examination of witnesses, mode of trial (including proceedings in lieu of demurrer, trial on motion for judgment and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial (*m*). Four days must elapse between the issue and return of such summons, and as far as practicable all or so many of such matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the order and direction of the Court or a Judge are to be included in the summons (*n*); and if upon any other application as to any of the above-mentioned matters or proceedings it shall appear to the Court or Judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such applications shall be granted only at the cost of the party making the same (*o*).

(*m*) Order xxx. r. 1. See form of Summons and Order in Appendix II. hereto.

(*n*) Order xxx. r. 2.

(*o*) Ibid. r. 3.

CHAPTER V.

TRIAL AND PROCEEDINGS TO CONCLUSION.

HAVING in the last Chapter considered the most usual interlocutory applications and proceedings in the course of an action, we may now continue its ordinary course, which we have pursued up to the close of the pleadings (*p*), and in which, therefore, the next step is to go to trial.

The first step towards the trial is to give notice of trial, which may be by the plaintiff with his reply (if any), whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial (*q*). Such notice must state whether it is for the trial of the action or of issues therein, and in the Division the practice whereof we are now specially considering, the place and day for which it is to be entered for trial (*r*). If the plaintiff does not give notice of trial within six weeks after the close of the pleadings the defendant may then give notice of trial, or may apply to have the action dismissed for want of prosecution (*s*).

There are four possible modes of trial :—

Four modes of trial.

First Mode.—*Before a Judge with a Jury.*—In cases of slander, libel, false imprisonment, malicious prosecution, seduction and breach of promise of marriage, the plaintiff may give notice of trial in this way, and if he gives notice of trial otherwise than with a jury

1st mode of trial.

(*p*) See ante, p. 67.

(*q*) Order xxxvi. r. 11.

(*r*) Ibid. r. 13. See form in Appendix II. hereto.

(*s*) Ibid. r. 12.

the defendant may within four days from service of notice of trial give notice that he requires a jury, and thereupon the action is to be so tried (*t*). In other cases notice of trial for or notice requiring a jury cannot be given; but it is provided that upon the application of any party for a trial with a jury an order shall be made for the same (*u*). The design of these Rules appears to be to check the practice of trial by jury, but yet leave the general right existing, subject to special provisions presently mentioned. Every trial with a jury is to be by a single Judge, unless it is specially ordered to be by two or more Judges (*x*).

2nd mode of trial.

Second Mode.—Before a Judge alone without a Jury.—In actions not falling within the first mode of trial subject to the provisions presently mentioned, the trial is to be by a Judge alone (*y*). The Court or a Judge may also, if it shall appear desirable, direct a trial without a jury of any question or issue of fact or partly of fact and partly of law, which previously to the passing of the Judicature Acts could without any consent of parties (*z*) have been tried without a jury (*a*), and also of any question or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot conveniently be made with a jury (*b*).

3rd mode of trial.

Third Mode.—Before an Official or Special Referee.—No notice can be given for trial in this way, but an order to that effect may be made (*c*).

4th mode of trial.

Fourth Mode.—By a Judge, or Official or Special Referee with Assessors.—No notice can be given for

(*t*) Order xxxvi. r. 2.

(*u*) Ibid. r. 6.

(*x*) Ibid. r. 9.

(*y*) Ibid. r. 7.

(*z*) This will mainly only comprise Chancery matters.

(*a*) Order xxxvi. r. 4.

(*b*) Ibid. r. 5.

(*c*) See ante, pp. 80, 81, and generally Order xxxvi. rr. 43–55.

trial in this way, but an order to that effect can be made (*d*).

Subject to the foregoing provisions, the Court or a Judge may in any action order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the place for such trials, and in all cases may order that one or more issues of fact be tried before any other or others (*e*).

The length of the notice of trial is ten days, unless the defendant is under terms to take short notice, which is a four days' notice (*f*). When the defendant is under terms it is nevertheless usual to give as long a notice as the time will admit of, but this is not absolutely necessary, unless the order only puts him on terms to take short notice if necessary. If this is the case the defendant is not bound to take short notice unless it becomes necessary, and it is not necessary if the plaintiff has been guilty of unnecessary delay in joining issue or giving the notice (*g*). The notice of trial in London or Middlesex does not operate for any particular sittings, but is deemed to be for the first day on which the cause can be reached after the expiration of the notice; elsewhere than in London or Middlesex it is deemed to be for the next assizes at the place for which notice of trial is given (*h*). No notice of trial once given can be countermanded, except by consent in writing signed by the parties or by leave of the Court or a Judge (*i*).

The notice of trial having been given, the next step is to enter the cause for trial. In London or Middlesex this entry must be made within six days after giving the notice (*k*). The party giving the notice should

(*d*) See ante, pp. 30, 31, and generally Order XXXVI. rr. 43-55.

(*e*) Order XXXVI. r. 8.

(*f*) Ibid. r. 14.

(*g*) Arch. Pr. 18th ed. p. 281.

(*h*) Order XXXVI. rr. 17, 18.

(*i*) Ibid. r. 19. Order XXVI. r. 2.

(*k*) Order XXXVI. r. 16.

enter it either on the day of the notice or the day after; if, however, he does not, his opponent may enter it within the four subsequent days (*l*), and if within that time neither party enters it the notice of trial falls through (*m*). Elsewhere than in London or Middlesex either party may, at any time before the day next before the Commission day, enter the cause for trial at the next assizes in the district registry (if any) of the city or town where the trial is to take place, or with the associate at the assize town (*n*). If both plaintiff and defendant enter the cause for trial, it is tried in the order of the plaintiff's entry, and the defendant's entry is vacated (*o*). On entering the cause, two sets of the pleadings must be lodged for the use of the Judge (*p*).

Preparation
for trial.

The next thing to be done by the parties is to prepare for the trial; and in the preparation for trial two notices that are usually given in actions should be observed—viz., a notice to produce documents at the trial, and a notice to inspect and admit documents.

Notice to
produce.

A notice to produce is simply a notice given by either plaintiff or defendant calling upon any other party to the action to produce certain documents at the trial (*q*). A form of such a notice is given in the Appendix (*r*); its object is that if the other party does not produce any documents in accordance with it he may give secondary evidence of their contents by copies or otherwise, which he would not be entitled to do if such notice had not been given (*s*). If any such notice comprises documents which are not necessary the costs

(*l*) Ibid. r. 20.

(*m*) Ibid. r. 16.

(*n*) Ibid. r. 22. Order XXXVI. r. 23, also provides that so long as certain assize towns therein named have no District Registry, actions to be tried therein may be entered as certain specified District Registries; and see generally as to entry of cases for trial at the assizes, Order XXXVI. rr. 22, 28.

(*o*) Order XXXVI. r. 28.

(*p*) Ibid. r. 3.

(*q*) Order XXXII. r. 8.

(*r*) Appendix II. hereto.

(*s*) See Indermaur's Principles of Com. Law, 3rd ed. pp. 422, 423.

occasioned thereby are to be borne by the party giving such notice (*t*). A notice to inspect and admit is simply a notice given in a like way, but calling on the other party to come and inspect certain documents at a certain time and place, and admit them, so as to save the expense of calling witnesses to prove them at the trial (*u*). A form of this notice is also given in the Appendix (*v*); and if it comprises any documents not necessary the costs thereof are to be borne by the party giving such notice (*x*). If the other party neglects or refuses to admit the documents the costs of proving them at the trial will have to be paid by him whatever the result of the action may be, unless at the trial the Court certify that the refusal to admit was reasonable. No costs of proving any documents are allowed unless this notice is given, except where the omission to give it has been, in the opinion of the taxing officer, a saving of expense. The party, if he admits the document, only admits them saving all just exceptions, which means that he does not thereby preclude himself in any way from contesting the validity of any document or objecting to it on the ground of its not being stamped or otherwise (*y*). When documents are admitted, an affidavit of the solicitor or his clerk of the due signature of the admission which is annexed to his affidavit is sufficient (*z*).

A notice to admit facts may also be given, but this has been previously referred to (*a*).

Before the day of the trial briefs are prepared on behalf of the respective parties to the action, contain-

(*t*) Order xxxii. r. 9.

(*u*) Ibid. r. 2.

(*v*) Appendix II. hereto.

(*x*) Order xxxii. r. 9.

(*y*) Ibid. r. 2.

(*z*) Ibid. r. 7. The student should be very careful not to confuse this notice to inspect and admit given above with the notice to produce for inspection which may be given in the course of an action. The latter has for its object only the seeing the documents in the course of the action, see ante, pp. 96, 97. He should also carefully observe the new notice for admission of facts, ante, pp. 82, 83.

(*a*) Ante, pp. 82, 83.

ing a statement of the case of the party on behalf of whom the brief is given, and a list of the witnesses to be called on his behalf and particulars of what each witness will prove; also notes as to the cross-examination of any witness expected to be called on the other side, and generally a brief should contain all such information as may be useful to counsel. A copy of the brief, the pleadings, any notices to produce and to inspect and admit and to admit facts, and any other necessary documents are delivered to each counsel employed on behalf of the particular party. Sometimes only one counsel is employed, sometimes two or more, according to the importance of the case; most usually there are two, a Queen's Counsel and a junior. However, it is now provided that in actions of contract where not more than £50 is recovered, the costs of briefing more than one counsel shall not be allowed unless the Taxing Master shall for special reasons be of opinion that briefing more than one counsel was proper (*b*). When it is proper to have two counsel they may be selected from the outer bar if the party thinks fit (*c*). A retainer to counsel is not allowed in a party and party taxation (*d*). Usually also before the trial a consultation or conference is arranged, so that counsel may be as far as is possible conversant with the facts, and any special points may be discussed. Fees are of course paid with the briefs and for the consultation or conference, and if the case is not reached at the sittings or assizes for which the brief is delivered a fee called a refresher is also paid, as is also the case if the trial of the action occupies more than one day. Fees to counsel should be reasonable, and with regard to refreshers the following definite proviso has been made—viz.: If the trial extends over more than one day and shall occupy either on the first day only or partly on the first and partly on a subsequent day or days more than five hours without being

(*b*) Order. LXV. r. 46.

(*c*) Ibid. r. 47.

(*d*) Ibid r. 44.

concluded, the Taxing Master may allow for every clear day subsequent to that on which the five hours have expired, to the leading counsel from five to ten guineas, to the second, if three counsel, three to seven guineas, and to the third, if three counsel, or the second, if only two, three to five guineas (*e*). Fees to counsel's clerks are still allowed and are specially regulated (*f*). No fee to counsel is to be allowed on taxation unless vouched by his signature (*g*).

The attendance of witnesses at the trial is enforced by means of subpoenas. A subpoena is a writ by which a person is commanded to appear at a certain place and time, and is either a writ of *subpoena ad testificandum* where a witness is simply required to give his oral testimony, or a *subpoena duces tecum* where, in addition, he is required to bring with him certain documents relating to the matters in question (*h*), and the writs are to be according to forms given in the Rules of 1883 (*i*). Three names are to be inserted in each *subpoena ad testificandum* where necessary or required, but it may contain any number of names (*k*), but no more than three names may be included in one *subpoena duces tecum* and the party suing out the same is to be at liberty to sue out a *subpoena duces tecum* for each person if it shall be deemed necessary or desirable (*l*). A copy of the subpoena must be served personally on each witness, the original being shewn at the same time (*m*), and service must be made within twelve weeks of the date of the writ, otherwise it ceases to be of any validity (*n*). It is usual on serving a subpoena to inform the witness he need not attend until he receives notice to do so, and afterwards

Subpoenas, and
as to witnesses
generally.

(*e*) Order LXV. r. 48.

(*f*) Ibid. r. 51.

(*g*) Ibid. r. 52.

(*h*) Brown's Law Dict. 2nd ed. tit. "Subpoena, Writ of," p. 511.

(*i*) Order XXXVII. r. 27.

(*k*) Ibid. r. 29.

(*l*) Ibid. r. 30.

(*m*) Ibid. r. 32.

(*n*) Ibid. r. 34.

to give the witness notice when the cause is coming on. A reasonable sum must be paid to each witness to defray his expenses of appearing on his subpoena, and he is justified in refusing to attend or to give evidence until his proper expenses are paid. If a material witness who has been properly served and to whom a reasonable sum for expenses has been paid or tendered does not obey his subpoena he is liable to attachment and also to an action. If a witness is resident in Scotland or Ireland a subpoena cannot be issued as a matter of course, but only by leave of the Court or a Judge. If a witness is in Her Majesty's dominions abroad a writ may be issued in the nature of a mandamus to the tribunals there for the examination of the witness, or instead, and also in all cases where a witness is abroad not in Her Majesty's dominions, a commission may be issued for the examination of the witness there, and the evidence thus taken in either of these ways will be allowed and read at the trial. The evidence of a witness in Scotland or Ireland may also be taken by commission instead of issuing a subpoena by leave as above stated. If a person who is required as a witness is in custody on civil process his evidence is obtained by his being brought up on *habeas corpus ad testificandum* which is granted by a Judge in Chambers, but if in custody not on civil process an order to bring him up to give evidence must be obtained from one of the principal Secretaries of State or a Judge at Chambers (o).

Witnesses out
of jurisdiction.

Witnesses
in custody.

Taking evi-
dence *de bene*
esse.

It sometimes happens that a person who will be required as a witness at the trial is about to go abroad, or is so ill that he is in danger of death. In any such cases if feasible the attendance of the party before an Examiner of the Court may be compelled by subpoena (p), or an order may be obtained for the examination of

(o) Order xxxvi. r. 35. See Arch. Pr. 13th ed. pp. 329-331.

(p) Order xxxvii. r. 20.

the witness before an officer of the Court or some other person (*q*). In support of the summons for such an order it must be shewn by affidavit that the party is a material witness and that he is about to go abroad, or is dangerously ill, and in this latter case there must be an affidavit of the illness by a medical man. The evidence so taken cannot be used at the trial (except by consent), unless it is shewn to the satisfaction of the Judge at the trial that the deponent is unable to attend (*r*).

With regard to trial by jury (*s*) the jury is more usually a common jury (*t*), in which case they are ready as a matter of course, or it may be a special jury (*u*). The plaintiff in any action in which he is entitled to a jury (*x*) may have a special jury upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial; and the defendant in like cases may have a special jury on giving notice to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given then not less than six clear days before the day for which notice of trial has been given. A Judge may also at any time make an order for a special jury upon such

(*q*) Order xxxvii, r. 5.

(*r*) Ibid. r. 18. See Arch. Pr. 13th ed. pp. 301-304.

(*s*) All persons between twenty-one and sixty are liable to serve on a jury, provided they have the necessary property qualification, as described *infra* in notes (*t*) and (*u*), and also provided they are not exempted from so serving. The chief persons exempted are peers, judges, magistrates, clergymen, doctors, barristers, and solicitors; but there are numerous other exemptions of less importance. A juryman who has been summoned, and fails to attend, is liable to be fined. Any party who is dissatisfied with a juryman on the ground of want of the necessary property qualification, or by reason of some supposed bias or partiality, or on some other grounds, may object to him, which objection is called a challenge. The jury are summoned to attend by the Sheriff (Arch. Pr. 13th ed. pp. 385-393).

(*t*) The main qualifications of a common juror are that he should have £10 a-year from freeholds or copyholds, or £20 a-year in leaseholds, or be a householder rated or assessed to the poor-rate, or to the inhabited house duty in Middlesex, on a value of not less than £30, or in any other county not less than £20 (Arch. Pr. 13th ed. p. 385).

(*u*) Special jurors are persons of a higher degree than common jurors, such as bankers or merchants (Arch. Pr. 13th ed. p. 386).

(*x*) As to which see *ante*, pp. 115, 116.

terms (if any) as to costs and otherwise as may be just (*y*). The party who obtains the special jury has to pay all the extra costs occasioned by it, whatever may be the result of the action, unless the Judge before whom the action is tried within a reasonable time after the trial certifies that the cause was one proper to be tried before a special jury (*z*).

View by jury. When it appears advisable on account of the nature of the case an order may be made for the jury to view the place or premises the subject of the action (*a*), and generally it is now provided that any Judge before whom any case may be tried either with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein, and this applies to inspection by a jury (*b*).

The trial. Finally, the action in its due order comes on to be tried, and taking there to be two counsel on each side, it usually proceeds as follows:—The plaintiff's junior counsel states shortly the effect of the pleadings, and the senior counsel states his client's case; the witnesses are then called and respectively examined by one of these counsel; cross-examined, if necessary, by the senior counsel on the other side, and then, if necessary, re-examined on any new points that have been raised by the cross-examination. The plaintiff's case being closed, the defendant's senior counsel states his client's case, and, in the same way as was done by the other side, his witnesses are now called and examined, cross-examined, and re-examined. He then addresses the jury on the evidence, and the plaintiff's senior counsel replies on the whole case. The Judge then sums up, telling the jury the points on which their verdict is required; and when they have considered the matter,

(*y*) Order xxxvi. r. 7.

(*z*) Arch. Pr. 13th ed. pp. 335, 338, 456.

(*a*) Ibid. 339, 340.

(*b*) Order l. rr. 4, 5.

they announce their verdict through the foreman they have chosen amongst themselves (c). If after the plaintiff's case is closed, the defendant's counsel announces that he does not intend to call any witnesses, the plaintiff's counsel must at once address the jury, and the defendant's counsel concludes with his address, thus having the last word to the jury (d). In the foregoing remarks it is put as if the plaintiff's counsel always commences, and so it is almost invariably; but the general rule is that the party to begin is he on whom the affirmative in the action lies, or, more correctly, the one who in the absence of proof on either side would substantially fail in the action. In cases, however, of slander, libel, and other actions for personal injuries where the plaintiff seeks to recover actual damages of an unascertained amount he is always entitled to begin, although the affirmative of the issue may in point of form be with the defendant (e).

Right to begin
at the trial.

In actions for libel or slander in which the defendant does not by his defence assert the truth of the statement complained of, the defendant is not to be entitled on the trial to give evidence in chief with a view to mitigation of damages as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless seven days at least before the trial he has furnished particulars to the plaintiff of the matters as to which he intends to give evidence (f).

Actions for
libel and
slander.

The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious and not

Disallowing
questions in
cross-examina-
tion.

(c) In the above nothing is said about the evidence being by affidavit, because such a thing in the Queen's Bench Division is not usual, in fact never occurs. Evidence by affidavit often occurs in the Chancery Division, and is dealt with post, pp. 164, 165.

(d) Order xxxvi. r. 36.

(e) Arch. Pr. 12th ed. pp. 354, 355.

(f) Order xxxvi. r. 37.

relevant to any matter proper to be inquired into in the action (*g*).

The verdict. The verdict is the unanimous decision of the jury on the facts submitted to them ; if they cannot agree on their verdict after a reasonable time, unless the parties agree to accept the verdict of a majority, they are discharged, and the action must be tried again.

Postponement of trial. It sometimes happens that at the trial one of the parties finds it necessary to apply for a postponement. This application may be granted on good grounds (*h*), but it is usually only done on the terms that the party applying pays the costs of the day—that is, those costs which will have to be incurred over again on account of the postponement, such as the issuing of fresh subpoenas, refreshers to counsel, &c.

Withdrawing a juror. In the course of a trial, sometimes the parties agree that the action shall come to an end, and that each party shall pay his own costs. This object is accomplished by withdrawing a juror, and the action cannot then be brought over again (*i*).

Nonsuit. A nonsuit is, technically, where the plaintiff does not appear at the trial, and the defendant succeeds by his default. A nonsuit, however, more usually occurs where the plaintiff finds he cannot succeed in his action, and voluntarily submits to be nonsuited—that is, to let it be considered as if he were not present. He cannot be nonsuited against his will. A nonsuit under the old practice prior to the Judicature Acts had this advantage over a verdict for the defendant—viz., that the plaintiff might bring the same action over again, so that in many cases a plaintiff would submit to be nonsuited in the hope that at the next trial he might have some additional evidence, or in other way be better prepared (*k*); but it has not now any

(*g*) Order xxxvi. r. 38.

(*h*) Ibid. r. 34.

(*i*) Arch. Pr. 13th ed. p. 376.

(*k*) Ibid. pp. 377, 378.

such advantage, it being provided that if when a trial is called on the defendant appears and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment, dismissing the action (*l*); but any such judgment may be set aside upon such terms as to the Court or a Judge may seem fit upon application made within six days after the trial (*m*).

The effect, then, of the plaintiff not appearing at the trial while the defendant does, is that a judgment of nonsuit, or a judgment dismissing the action, is entered; but in addition to this, if the defendant has any counter-claim, he may prove such claim so far as the burden of proof lies on him (*n*). If the defendant does not appear at the trial, while the plaintiff does, the plaintiff may prove his claim so far as the burden of proof lies on him (*o*), subject to its being set aside in like manner and within the like time as in the case of a Judgment on non-appearance of the plaintiff (*p*). If neither party appears at the trial, the cause is struck out. The Court or a Judge may, if he thinks it expedient in the interest of justice, postpone or adjourn a trial for such time or upon such terms (if any) as he thinks fit (*q*), and if the adjournment is rendered necessary by any negligence or omission of a solicitor engaged, the Court or a Judge may order such solicitor to personally pay any costs to all or any of the parties (*r*).

Judgment—that is, the sentence of the law pronounced by the Court upon the matter appearing from the previous proceedings in the action (*s*)—follows on

(*l*) Order xxxvi. r. 32. There is no provision in the new rules, in place of the former Order xli. r. 6, but I presume that Order xxxvi. r. 32, is considered sufficient by itself, as it cannot be meant to revive the old practice with regard to nonsuits.

(*m*) Order xxxvi. r. 33.

(*n*) Ibid. r. 32.

(*o*) Ibid. r. 31.

(*p*) Ibid. r. 33, *supra*.

(*q*) Ibid. r. 33.

(*r*) Order lxy. r. 5.

(*s*) See Brown's Law Dict. 2nd ed. p. 290.

Effect of plaintiff and defendant respectively not appearing at trial.

the verdict. Upon the trial of an action the Judge may at or after the trial direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment can be entered after trial without the order of a Court or Judge (*t*). In all ordinary cases the Judge, either at the trial or after argument on some subsequent day, directs judgment to be entered in accordance with the verdict, and the certificate of the Associate or Master to that effect is sufficient authority to the proper officer to enter judgment accordingly (*u*); but if he abstains from doing so, the judgment of the Court must be obtained by motion for judgment (*x*). If the plaintiff does not so set the cause down on motion for judgment, and give notice to the other parties within ten days after the trial, any defendant may do so (*y*); and no action, except by special leave, can be set down on motion for judgment after the expiration of one year from the time when the party seeking to set down the same first became entitled to do so (*z*). At the hearing of this motion the Court decides which of the parties is entitled to judgment under the verdict given on the facts.

Course to be taken when party objects to judgment directed to be entered.

Where at or after a trial with a jury the Judge has directed that any judgment be entered, any party may apply to set the same aside and enter any other judgment on the ground that as entered it is wrong by reason that the finding of the jury has not been properly entered (*a*); in addition to this, where at or after a trial by a Judge, either with or without a jury, the Judge has directed that any judgment be entered, any party may apply to set the same aside and enter

(*t*) Order xxxvi. r. 39.

(*u*) Ibid. r. 42.

(*x*) Order xl. r. 1.

(*y*) Ibid. r. 2.

(*z*) Ibid. r. 9.

(*a*) Ibid. r. 3.

any other judgment, upon the ground that upon the finding as entered the judgment so directed is wrong (b). The application, in either of such cases, is to the Court of Appeal, unless where there has been a trial with a jury there is also a motion for a new trial, in which case it is to the Divisional Court (c).

The cases in which a Judge would decline to direct judgment to be entered at the trial, or in which the other party would apply to set aside the judgment, are cases in which on the special facts of the case as found by the jury there is, or is considered to be, a doubt as to which of the parties is in law entitled to the judgment. In all ordinary and simple cases there is no such doubt, and judgment goes, as a matter of course, in accordance with the verdict.

Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge, on motion or summons without an appeal (d).

If in any action judgment is given for a person who is an infant, or of unsound mind, not so found by inquisition, the Court or a Judge may at or after the trial order that the whole or any part of the sum awarded shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid in is to be subject to such orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested or paid out of Court or transferred to such persons, to be held and applied upon and for such trusts and in such manner as the Court or a Judge shall direct (e). Any money so paid into Court or securities purchased under this provision, and the dividends or interest thereon,

(b) Order XL. r. 4.

(c) Ibid. r. 5.

(d) Order XXVIII. r. 11.

(e) Order XXII. r. 15.

is to be sold, transferred, or paid out to the party entitled thereto pursuant to the order of the Court or a Judge (*f*).

Judgment
after trial of
issues.

Where issues have been ordered to be tried, or any issue of fact to be determined in any manner, the course to obtain judgment is for the plaintiff to move for same as soon as they have been determined. If he does not set down the motion for judgment, and give notice thereof to the other parties within ten days after his right to do so has arisen, any defendant may do so (*g*).

Power of Court
on motion for
judgment.

Upon any motion for judgment the Court may draw all inferences of facts not inconsistent with the finding of the jury, or if it appears necessary or advisable may direct the motion to stand over for further consideration, and direct any issue to be tried or determined and accounts and inquiries to be taken and made as it may think fit (*h*).

Date of
judgment.

Any judgment pronounced by the Court or a Judge in Court is dated as of the day on which it is pronounced, unless otherwise ordered, and the judgment takes effect from that date, but by special leave a judgment may be ante-dated or post-dated (*i*). After judgment the successful party, if he is entitled to his costs, proceeds to tax them and the amount is filled in the judgment (*k*).

Judgment or
order granted
upon some
condition.

Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he is deemed to have waived or abandoned such judgment or order so far as beneficial to himself, and any other person interested therein may, on breach or non-performance of the condition, take either such proceedings as the judgment or order may in such case warrant, or such proceedings

(*f*) Order xxii. r. 16.

(*g*) Order xl. r. 7.

(*h*) Ibid. r. 10.

(*i*) Order xli. r. 3.

(*k*) As to costs generally see post, pp. 143-145.

as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct (*l*).

An application not at all unfrequently made after New trials. verdict is for a new trial. The following are the chief grounds of the application:—(1.) That the Judge has misdirected the jury upon some point of law or has not taken their verdict upon a point he was asked at the trial to leave to them; (2.) That he has wrongfully admitted or rejected certain evidence; (3.) That the verdict is against the weight of the evidence; (4.) That the damages are excessive; (5.) That the damages are too small (*m*); (6.) The misconduct of the jury, as if they cast lots to decide the verdict (*n*). No new trial can, however, be granted on the grounds above numbered (1) and (2), unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned to the trial of the action, and if it appears to the Court that such wrong or miscarriage affects part only of the matter in controversy, the Court may give a new trial as to that part only, without in any way interfering with the finding or decision upon any other question (*o*). With regard to the ground given above, numbered (3), the Court is, in granting a new trial, in a great measure guided by whether the Judge who tried the cause is satisfied with the verdict or not (*p*); and therefore it follows that though when a trial has taken place before a Judge without a jury the Court has full power to grant a new trial if it sees fit, yet it will not usually do so on this ground.

The application for a new trial is made to a Divi- To whom
application for

(*l*) Order XLII. r. 2.

(*m*) A very strong case however has to be made out to succeed on either of the grounds numbered four and five.

(*n*) See Arch. Pr. 13th ed. pp. 1210–1236.

(*o*) Order XXXIX. r. 6.

(*p*) Arch. Pr. 13th. ed. p. 1215.

new trial made, and mode of applying. sional Court, unless the trial has been by a Judge without a jury, when the application is made to the Court of Appeal (*g*), and no Judge can sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself (*r*). Every application for a new trial is to be made in future by notice of motion and no rule nisi, order to shew cause or formal proceeding other than such notice of motion, is to be made or taken, and the notice must state the grounds of the application and whether all or part only of the verdict or findings is complained of (*s*).

Time for applying, &c.

The notice of motion is an eight days' notice and must be served within the times following—viz. : if the trial has taken place in London or Middlesex, within eight days after the trial, and if elsewhere within seven days after the last day of sittings on the circuits for England and Wales during which the trial shall have taken place (*t*). The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion (*u*). A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question (*x*). No new trial may be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient or that the document does not require a stamp (*y*).

Motion for new trial may be directed to stand over, &c.

If upon any motion for a new trial, the Court considers that it has not sufficient materials before it, it may direct the motion to stand over for further consideration and direct any issues to be tried if necessary.

(*g*) Order xxxix. r. 1.

(*r*) Ibid. r. 2.

(*s*) Ibid. r. 3.

(*t*) Ibid. r. 4. This seems to mean the expiration of the whole of the circuits, and not the particular one.

(*u*) Ibid. r. 4.

(*x*) Ibid. r. 7.

(*y*) Ibid. r. 8.

The Court has also power to draw all inferences of fact not inconsistent with the finding of the jury (z).

The judgment being thus complete, if payment of the amount of it is not made, the next thing is to enforce it; and the Rules of 1883 appear to render it necessary first to serve the judgment (a), it being provided that "where any person is by any judgment or order directed to pay any money or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order *upon being duly served* with the same without demand" (b). An ordinary judgment for payment of money may then be enforced by any of the modes by which it might have been prior to the Judicature Acts (c), the chief of which modes are presently detailed, and the most usual being execution, which is issued by producing to the proper officer the judgment or an office copy with a præcipe containing the title of the action, &c., and a form of writ of execution, which must be indorsed with the name of the solicitor issuing it, and if he is agent, then with the two names, and also with a direction to the sheriff or other officer or person to whom the writ is directed, to levy the amount actually due, with interest at 4 per cent. per annum from the date of the judgment, or for any higher

Steps to
enforce judg-
ment.

(z) Order XL. r. 10.

(a) A most extraordinary and inconvenient course if personal service is necessary; but I assume that service at the address for service is sufficient for all purposes of ordinary execution. It may indeed be questioned whether Order XLII. r. 1, makes service an essential in ordinary judgments for payment of money, as Order XLII. r. 28 provides that "nothing in this order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or party whatsoever." Certainly service was not necessary before. The matter appears to me very doubtful, and is about one of the first every-day points that practice will quickly decide. See also Order XLI. r. 5, requiring a memorandum to be endorsed on judgment or order on service, but as it surely cannot be meant that this is to apply to ordinary judgments, I have dealt with this as only applying to certain particular judgments, as is no doubt meant. See post, pp. 138, 139.

(b) Order XLII. r. 1.

(c) Ibid. r. 3.

interest that the parties may have agreed on ; and the officer before issuing execution must be satisfied that the proper time has elapsed to entitle the party to issue it (*d*). If after the judgment a part of the amount is paid, the body of the writ nevertheless pursues the judgment strictly, but the indorsement is only to levy the actual amount due. A writ of execution may be issued on a judgment for payment of money directly it is duly entered and has been duly served (*e*), unless the Court or Judge directs it to be postponed, as may be the case (*f*). Execution must be issued within six years of the judgment, and before any change in the parties has occurred by death or otherwise, unless leave is obtained from the Court or a Judge to issue execution afterwards (*g*). The writ of execution remains in force for one year, but may be renewed for one year from the date of renewal, and so on from time to time, by the writ itself, or a notice of renewal to the sheriff, being marked with the seal of the Court, bearing the date of the renewal, which is sufficient evidence of the renewal (*h*).

Enforcing judgment by person not a party to action. A person not a party to an action may enforce any judgment or order made therein in his favour in the same way as if he were a party (*i*).

Writs of execution The chief writs of execution that may be issued in ordinary cases are writs of *feri facias*, *capias ad satisfaciendum*, and *elegit*.

Fieri facias. A writ of *feri facias* (shortly called a writ of *fi. fa.*), is a writ directed to the sheriff commanding him that of the goods and chattels of the debtor he do cause to be made the sum indorsed on the writ, together with interest at 4 per cent. (*j*). The sheriff executes this

(*d*) Order XLII. rr. 11-16.

(*e*) Ibid. r. 1.

(*f*) Ibid. r. 17.

(*g*) Ibid. rr. 22, 23.

(*h*) Ibid. rr. 20, 21.

(*i*) Ibid. r. 26.

(*j*) Brown's Law Dict. 2nd ed. tit. "Fi. fa.," p. 229.

writ by taking possession of the party's goods and chattels, and selling the same.

A writ of *capias ad satisfaciendum* (shortly called a *Ca. sa.* writ of *ca. sa.*) is a writ of execution commanding the sheriff to seize the body of the debtor and keep it to satisfy the amount due (*k*). This writ cannot however now often issue, in consequence of the Debtors Act, 1869 (*l*). Any order of commitment under that Act bears date on the day on which it is made, and continues in force for one year only, but may be renewed in the same manner as has been stated with regard to writs of execution (*m*).

A writ of *elegit* (*n*) is a writ of execution to the sheriff *Elegit.* commanding him to appraise the goods of the debtor, instead of selling them, and to deliver them to the judgment creditor in satisfaction, or part satisfaction, of the judgment debt according to their appraised value. If this is not sufficient to satisfy the judgment debt, then the lands themselves may be taken possession of, and the judgment creditor holds them until out of the profits his debt is satisfied (*o*), or after registering his execution he may apply summarily for a sale of his debtor's interest in the lands (*p*). When the judgment debtor is satisfied out of the rents, there are various ways in which he can recover back his lands, but the most proper and advisable mode of proceeding is to apply to the Division out of which the *elegit* issued to refer it to one of the Masters to ascertain the amount of the rents and profits received, and to order that if it appear that the

Mode in which judgment debtor can recover back his lands when judgment is satisfied.

(*k*) Brown's Law Dict. 2nd ed. tit. "Capias ad Satisfaciendum," p. 76.

(*l*) 32 & 33 Vict. c. 62. See Indermaur's Principles of Com. Law 3rd ed. pp. 336, 337.

(*m*) Order XLII. r. 25.

(*n*) It may be noticed that this writ of *elegit* has practically superseded a former process by writ of *Levari facias*, which commanded the sheriff to seize the judgment debtor's lands and chattels, and not deliver them to the judgment creditor, but collect thereout sufficient for him (see Arch. Pr. 13th ed. pp. 601, 602.)

(*o*) Brown's Law Dict. 2nd ed. tit. "Elegit," p. 198; Arch. Pr. 13th ed. pp. 588-601.

(*p*) 27 & 28 Vict. c. 112, s. 4.

Equitable execution. debt is satisfied, possession shall be delivered to the debtor (*g*). If a debtor has only an equity of redemption in land, and not the legal estate, the proper course is to proceed to equitable execution, which is done by taking out a summons for the appointment of a receiver (*r*).

Discovery in aid of. The Court or a Judge has power to grant discovery as an assistance towards execution by ordering that the debtor, or in the case of a corporation any officer thereof, be orally examined as to his property and debts, and for the production of any books or documents (*s*).

Obtaining sheriff's return. The result of any writ of execution is officially given by the sheriffs' return thereto, to obtain which no order is now necessary, but a notice is served at the office of the sheriff, calling upon him to return the writ within a given time (*t*).

In many cases the debtor may not have any goods or lands on which execution can be levied, but there are two other modes of enforcing the judgment, which, though equally applicable in all cases, may be specially useful then—viz., a garnishee order, and a charging order.

Garnishee order. A garnishee order is an order obtained by a judgment creditor (*u*) against some third party who owes money to the judgment debtor, commanding him to pay such money to the judgment creditor, in satisfaction, or part satisfaction, of his debt. It is obtained on an *ex parte* application of the judgment creditor, supported by the affidavit of himself or his solicitor, that judgment has been recovered, and to what amount, and is still unsatisfied, and that some third person within the jurisdiction is indebted to the judgment debtor ;

(*g*) Arch. Pr. 13th ed. p. 601.

(*r*) Jud. Act, 1873, s. 25 (8) ; *Smith v. Cowell*, 6 Q. B. D. 75 ; 50 L. J. Q. B. 38 ; *Salt v. Cooper*, 16 Ch. D. 544 ; 50 L. J. Ch. 529.

(*s*) Order XLII. r. 32.

(*t*) Order LII. r. 11. This by analogy to the former practice is a four days' notice.

(*u*) This term includes any person to whom money is to be paid under an order (Order XLV. r. 1). Formerly it was otherwise (*Cremetti v. Crom*, 48 L. J. (Q. B.) 337).

and upon this the Court or a Judge may order such debt to be attached, and also order the third person, who is called the garnishee, to appear and shew cause why he should not pay the judgment creditor the debt due from him to the judgment debtor, or so much thereof as may be sufficient to satisfy the judgment debt (*v*). Service of this order binds the debt in the garnishee's hand from that time, and if he does not pay the amount claimed into Court, or dispute the debt, or appear on the summons, execution may be issued against him for the amount (*x*), and payment by him is a valid discharge to him as against the debtor (*y*); if, however, the garnishee disputes his liability, an issue may be directed to try the question, or it may be ordered to be tried in any way in which an action may be tried or determined (*z*). If a judgment creditor does not actually know any one who owes money to the judgment debtor, but has reason to suspect that some such debt may be owing, he may obtain an order, in the first instance, for the oral examination of the judgment debtor as to whether any and what debts are owing to him, and for the production of any books or documents (*a*). The costs of garnishee proceedings are in the discretion of the Court or a Judge (*b*).

Whenever in garnishee proceedings the garnishee suggests that the debt sought to be attached belongs to some third person, or that some third person has a lien on it, the Court or a Judge may order such third person to appear and state the nature and particulars of his claim, and may direct an issue to try the right thereto (*c*).

A garnishee order cannot be obtained to attach the wages owing to any servant (*d*).

Conflicting
claims in
garnishee pro-
ceedings.

Wages Attach-
ment Abolition
Act, 1870.

(*v*) Order xlv. r. 1.

(*x*) Ibid. rr. 2, 3.

(*y*) Ibid. r. 7.

(*z*) Ibid. r. 4.

(*a*) Ibid. r. 1.

(*b*) Ibid. r. 9.

(*c*) Ibid. rr. 5, 6.

(*d*) 33 & 34 Vict. c. 30. As to what are "wages" and who is a "servant" within the meaning of this Act, see *Gordon v. Jennings*, L. R. 9 Q. B. D. 45; 51 L. J. Q. B. 417.

Charging order.

A charging order is an order charging the amount of any judgment upon stock of the judgment debtor. When any judgment debtor has any Government stocks or funds, or any stocks or shares in his own right, any judgment creditor may apply for an order for the same to stand charged with the judgment debt, and any such order entitles the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor, except that no proceeding can be taken to have the benefit of such charge until after the expiration of six calendar months from the date of the order. Any such order is, in the first instance, *ex parte* only, and may be varied or discharged on due cause shewn (*e*).

Modes of enforcing various judgments.

A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorized by law, by attachment (*f*). A judgment for recovery or delivery of possession of land may be enforced by writ of possession (*g*). A judgment for the recovery of any property other than land or money may be enforced (a) by writ for delivery of the property; (b) by writ of attachment; (c) by writ of sequestration (*h*). A judgment requiring any person to do any act, other than the payment of money, or to abstain from doing anything may be enforced by writ of attachment or by committal (*i*).

Memorandum to be indorsed on certain judgments.

With regard to any judgment or order requiring a person to do an act thereby ordered, the time after service within which it is to be done must be stated therein, and upon the copy judgment served there must be indorsed a memorandum as follows, viz.: If you the

(*e*) 1 & 2 Vict. c. 110, ss. 14, 15, and Order XLVI. r. 1.

(*f*) Order XLII. r. 4.

(*g*) Ibid. r. 5.

(*h*) Ibid. r. 6.

(*i*) Ibid. r. 7. Where a mandamus is granted by any judgment or order, no writ of mandamus is now issued, but the judgment or order has the same effect as a writ of mandamus formerly had (Order LIII. r. 4). As to the granting of a prerogative writ of mandamus see Order LIII. rr. 5, 15.

within named A. B. neglect to obey this judgment (or order) by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment (or order) (*j*). A party who has obtained judgment or an order other than for payment of money or costs, or for the recovery of land, may issue execution in fourteen days, unless the Court or a Judge shall order execution to issue at an earlier or later date (*k*).

A writ for delivery is a writ commanding the delivery up of certain property, and can be enforced by the sheriff distraining on the lands and goods of the person till the same is delivered (*l*). Writ for delivery.

A writ of attachment is a writ directed to the sheriff (*m*) commanding him to attach or imprison a certain person on account of his contempt of Court. No writ of attachment can be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued (*n*). Writ of attachment.

A writ of sequestration is a writ issued for the purpose of levying on a person's property on account of his disobedience to the judgment or order of the court (*o*). No sequestration to enforce payment of costs only can now be issued without leave of the Court or a Judge (*p*). Writ of sequestration.

A writ of possession is a writ issued to the sheriff directing him to put the party in possession of certain lands (*q*). Upon any judgment or order for the re- Writ of possession.

(*j*) Order XLII. r. 5.

(*k*) Order XLII. r. 19. I think that generally the provisions in the new Rules as to entry of and enforcement of judgments are very confused and must be amended.

(*l*) Order XLVIII. ; Arch. Pr. 13th ed. pp. 618-620.

(*m*) An attachment against a sheriff is directed to the coroner, and an attachment against a coroner is directed to elisors.

(*n*) Order XLIV. ; Arch. Pr. 13th ed. pp. 1387-1395. See also as to Attachment, post, p. 201.

(*o*) See Order XLII. rr. 4, 31, and Order XLIII. r. 6 ; Arch. Pr. 13th ed. pp. 621-623.

(*p*) Order XLIII. r. 7.

(*q*) See Order XLVII. rr. 1, 2.

covery of any land and costs there may be either one writ or separate writs of execution for the recovery of possession, and for the costs at the election of the successful party (r).

Writs of *fi. fa. de bonis ecclesiasticis* and *sequestrari facias*.

Where a defendant against whom a judgment has been recovered is a clergyman, there are two writs of execution that may be issued with regard to his benefice; viz., a writ of *feri facias de bonis ecclesiasticis*, and a writ of *sequestrari facias*. These writs are very similar in their nature, being both directed to the bishop of the diocese, and having for their object the raising of the amount of the judgment debt out of the property of the benefice (s). They are both in aid either of a *fi. fa.* or *elegit*, and cannot be issued until after the return of one of such writs that the party has no goods or no lay fee within the sheriff's bailiwick (t).

Execution against a partnership firm.

The student will remember that actions may be brought against a partnership firm in its partnership name without enumerating the particular persons constituting the partnership (u). As a doubt might naturally arise in some cases as to whether a certain person is or is not a member of the firm in question, and accordingly whether or not execution may be issued against him, it is specially provided that execution may be issued (1) against any of the direct partnership property, or (2) against any person who has admitted by his appearance in his own name or on the pleadings that he is, or who has been adjudged to be, a partner, or (3) against any person who has been served as a partner with the writ and has failed to appear; and in addition to this, (4) that if the judgment creditor claims to be entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave to do so, and the Court or a

(r) Order XLVII. r. 3.

(s) Arch. Pr. 13th ed. pp. 1062-1064.

(t) Order XLIII. rr. 3, 4, 5.

(u) Ante, pp. 49, 50.

Judge may give such leave if the liability is not disputed, or if disputed may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined (x).

No writ of execution can be issued without the production to the officer by whom the same should be issued of the judgment upon which the writ of execution is to issue, or an office copy thereof shewing the date of entry. And the officer must be satisfied that the proper time has elapsed to entitle the judgment creditor to execution (y). Production of judgment on issuing execution.

Any order of the Court or a Judge may be enforced against all parties bound thereby in the same manner as a judgment to the same effect (z). Enforcing an order.

One special kind of judgment should be here mentioned, though not very often occurring. If an action is brought against an executor or administrator and he in his defence states that he has fully administered all assets come to his hands—that is, exhausted all assets—or all except some small amount (called formerly pleas of *plene administravit* and *plene administravit præter* respectively), if the plaintiff cannot disprove this defence he may sign a judgment against any assets which may at any time afterwards come to the defendant's hand. This is called a judgment *quando acciderint* (a). Judgment *quando acciderint*.

Under the old practice prior to the Judicature Acts, on such a judgment, when assets afterwards came to the hands of the executor or administrator, the plaintiff must, to have taken advantage of them, have first How execution obtained under such a judgment.

(x) Order XLII. r. 10.

(y) Ibid. r. 11.

(z) Ibid. r. 24.

(a) See Brown's Law Dict. 2nd ed. p. 435, tit. "Quando acciderint."

sued out a writ of *scire facias* (b) against such executor or administrator before he could have execution (c). This, however, is not now the proper course, it being provided that where a judgment is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried (d). The proper course, therefore, for a creditor to take who has obtained such judgment, and who has ascertained that assets have come to the executor's or administrator's hands, is to serve a demand for payment, and then apply by summons for leave to issue execution, supporting his application by affidavit shewing that such assets have come to the executor's hands and that such demand has been made.

Removal of judgment of inferior Court for purpose of execution.

Where judgment has been recovered in an inferior Court of Record and there is no property of the defendant within its jurisdiction, the judgment can by order of a Judge be removed into the High Court (irrespective of the amount of the judgment) and execution issued thereon in the ordinary way (e).

(b) A *scire facias* is a judicial writ founded upon some record, and requiring the person against whom it is brought to show cause why the person bringing it should not have advantage of such record, or (as in the case of a *scire facias* to repeal letters patent) why the record should not be annulled and vacated (Arch. Pr. 13th ed. p. 934).

(c) Arch. Pr. 13th ed. p. 933.

(d) Order XLII. r. 9.

(e) Arch. Pr. pp. 1415, 1416. As to removal in other cases, see 19 & 20 Vict. c. 108, s. 38, and Arch. Pr. pp. 1411, 1418.

The judgment being enforced, the whole object of the action is accomplished and it is at an end. This Chapter would, however, be incomplete without a short consideration of the subject of the costs that a plaintiff or a defendant is entitled to and is able to include in his judgment and to enforce against the other party (*f*).

The subject of costs at Common Law was, prior to the Judicature Acts, one of great intricacy and difficulty, and though it cannot even now be said to be perfectly plain and clear, yet it is much simpler than formerly; there appears to be no good object to be accomplished in a work like the present by going fully into the former position, for such a course would, in the author's opinion, tend only to confuse the student.

Costs are in the discretion of the Court (*f*), but this provision does not deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the former rules of Equity, provided that he has not unreasonably instituted, or carried on, or resisted any proceedings, and provided also that where any action or issue is tried by a jury the costs shall follow the event, unless upon application made at the trial for good cause shewn the Judge before whom such action or issue is tried, or the Court, shall otherwise order (*g*).

It has, however, been provided by the County Courts Act, 1867 (*h*), as amended by 45 & 46 Vict. c. 57, sect. 4, that if in any action in one of the Superior Courts the plaintiff shall recover a sum less than £20 on contract or less than £10 on tort he shall not be entitled to any costs unless the Judge certifies that there was sufficient reason for bringing such action in the Superior Court, or unless the Court or a Judge at Chambers shall by rule or order allow such costs.

(*f*) See also as to costs, ante, pp. 27, 28; and post, pp. 202-205.

(*g*) Order LXV. r. 1.

(*h*) 30 & 31 Vict. c. 142, s. 5.

Special provision in case of action not exceeding £50 on contract.

By the Judicature Act, 1873 (i), it is enacted that the provision of the County Courts Act, 1867, shall apply to all actions commenced or pending in the High Court of Justice in which any relief is sought which can be given in a County Court. It is also now provided by the Rules of 1883 that in actions founded on contract in which the plaintiff recovers by judgment or otherwise a sum (exclusive of costs) not exceeding £50, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a County Court, unless the Court or a Judge otherwise orders (k).

Therefore, since the Judicature Acts, where the action or issue is tried by a jury (except it is a case within sect. 5 of the County Courts Act, 1867, above mentioned, in which the relief could have been given in a County Court), the party succeeding recovers his costs from his opponent (which in the one case above-mentioned will only be County Court costs) unless the Judge at the trial, or the Court, otherwise order, and this is so whatever he may recover, even though it be but a farthing, for though under certain statutes formerly this would not have been so, yet those statutes are now impliedly repealed by the Judicature Acts (l).

Statement of position now.

The general position as to costs may now be shortly stated to be, that whoever succeeds in the action will get his costs, except that in the case of the plaintiff being the successful party, if the amount is less than £20 on contract or £10 on tort, and he might have brought his action in the County Court, he cannot get costs without a certificate as above-mentioned, and if the case is one of contract and not exceeding £50 is recovered the costs allowed will only be County Court costs. A special order altering this general

(i) 36 & 37 Vict. c. 66, s. 67.

(k) Order LXV. r. 12.

(l) *Garnett v. Bradley*, L. R. 3 H. L. 944; 48 L. J. Q. B. (H. L.) 186; Arch. Pr. 13th ed. p. 420.

rule as to costs may however be made. In consequence of the provisions of the County Courts Act, 1867, it follows that actions in which the amount sought or expected to be recovered does not exceed the sums therein mentioned, should always be commenced in a County Court, except indeed where the County Court has no jurisdiction, which cases are breach of promise of marriage, libel, slander, malicious prosecution, and seduction. Except in these cases the County Courts have jurisdiction up to £50, also in actions to recover any lands or try any title thereto where neither the value of the property nor the rent exceeds £20, and also to recover small tenements from tenants at sufferance when the annual rent or value does not exceed £50 (*m*).

Where in cases coming within the County Courts Act, 1867, by reason of a set-off the plaintiff recovers only a balance which is less than the sum mentioned in the Act, he does not get his costs without a certificate. If, however, the defendant's claim is a counter-claim as distinguished from a set-off, then, it is different,—the plaintiff will get his full costs, and the defendant any costs in respect of the counter-claim (*n*).

*Costs on set-off
and counter-
claims.*

Where issues of fact and law are raised upon a claim and counter-claim, the costs of the several issues respectively both of law and fact follow the event unless otherwise ordered (*o*); but in such cases the plaintiff, if he succeeds on his claim, gets the general costs of the cause, although on the finding on the counter-claim the balance may be in favour of the defendant (*p*). Where the defendant actually recovers on his counter-claim

(*m*) See 9 & 10 Vict. c. 95; 13 & 14 Vict. c. 61; 30 & 31 Vict. c. 142. As to their jurisdiction in matters coming within the Chancery Division see post, p. 205.

(*n*) *Stooke v. Taylor*, 5 Q. B. D. 569; 29 W. R. 49; *Bains v. Bromley*, 29 W. R. 245.

(*o*) Order LXV. r. 2.

(*p*) *Bains v. Bromley*, 6 Q. B. D. 691; 50 L. J. Q. B. 465.

a balance against the plaintiff, though the amount is less than £20 on contract or £10 on tort, the County Courts Act does not apply, and he gets his costs (*q*).

Where in an action there is a counter-claim, and both claim and counter-claim are dismissed with costs, the defendant has only to pay the sum by which the costs have been increased by the counter-claim (*r*).

Depriving
successful
party of costs.

Where the verdict of the jury is in the plaintiff's favour, and if not otherwise ordered he would get his costs, the Judge at the trial, or the Court, will in general make an order under the latter part of Order LXV. Rule 1 (*s*), depriving the plaintiff of his costs where the action is a frivolous one or there was no necessity for bringing it; and in exercising this discretion the Judge is not confined to the consideration of the conduct of the party in the course of the litigation, but may consider his conduct previous to and conducing to the action (*t*). And a plaintiff successful at the trial may not only be deprived of his costs, but he may be ordered to pay the defendant's costs (*u*). So if a defendant obtains a verdict, an order may in some cases be made depriving him of his costs (*x*); but it is not within the discretion of the Court to make a defendant pay the whole costs of the action if the plaintiff had no right to sue (*y*). Any such order as to costs only, is not subject to any appeal except by leave of the Court or Judge making such order (*z*).

Taxation.

The costs given against an opponent are taxed by one of the Masters. A copy of the bill of costs is

(*q*) *Blake v. Appleyard*, 3 Ex. D. 195; 49 L. J. Ex. 407.

(*r*) *Saner v. Bilton*, 11 Ch. D. 416; *Mason v. Brentini*, 15 Ch. D. 287; 29 W. R. 126.

(*s*) Ante, p. 143. The application to the Judge or the Court is an alternative and not on appellate jurisdiction (*Marsden v. Lanc. and York Ry. Co.*, 7 Q. B. D. 641; 50 L. J. Q. B. 318).

(*t*) *Harnett v. Vise*, 5 Ex. D. 307; 29 W. R. 7.

(*u*) *Harris v. Petherick*, L. R. 4 Q. B. D. 611; 48 L. J. Q. B. 521.

(*x*) Order LXV. r. 1; Arch. Pr. 13th ed. pp. 420, 421.

(*y*) *Dicks v. Yates*, 18 Ch. D. 76; 50 L. J. Ch. 809.

(*z*) Jud. Act. 1873, s. 49.

delivered to the opponent's solicitor, together with at least one day's notice of an appointment to tax same, and, if required, an affidavit of increase must be made (a). This affidavit of increase is an affidavit made by the solicitor or his managing clerk (who must depose that he has had the management of the action), verifying the payments to counsel, to witnesses, length of brief, &c. Notice of taxing costs is not necessary where the defendant has not appeared (b). The costs having been taxed, the amount thereof is filled in the judgment by the Master (c).

There are two scales of costs allowed—the “Higher” ^{Higher and lower scale of costs.} and the “Lower”—and the latter is now in all cases the scale to be observed in taxing costs in all actions unless otherwise ordered (d), but full power is given to the Court or a Judge to order taxation on the higher scale, either of the whole costs of the cause or of any particular application where, by reason of special grounds arising out of the nature and importance or difficulty or urgency of the case it appears right to do so (e); and where a solicitor's bill is being taxed not under an order for taxation and payment against an opposite party, or out of a fund or estate, but for the purpose of ascertaining the amount due to him from his client, the Taxing Master, though he is primarily to tax on the lower scale, has a discretion to make any allowances on the higher (f).

With regard, however, to causes and matters pending ^{Costs in matters pending on 24th Oct. 1883.} on the 24th October, 1883 (the date of the coming into force of the new rules of 1883), parties are to be still entitled to the higher scale of costs, as it stood under the prior practice, in cases in which under such practice

(a) Order LXV. r. 16.

(b) Ibid. r. 17.

(c) See generally as to allowances on taxation Order LXV. r. 27, some of the provisions of which have been already referred to (ante, pp. 27, 28).

(d) Order LXV. r. 8.

(e) Ibid. r. 9.

(f) Ibid. r. 10.

they were entitled to the same (*g*) ; that is, in all cases in which the principal and primary relief is an injunction, and in Chancery matters where the whole matter or estate involved exceeded in value £1,000.

Difference
between party
and party, and
solicitor and
client costs.

The costs that are obtained against an opponent in an action are called party and party costs, and those that a solicitor charges against his own client are called solicitor and client costs. The difference is that party and party costs comprise only things actually necessary in the action ; but solicitor and client costs include not only this, but in addition anything advisable under the circumstances—*e.g.*, conferences with counsel, &c. From this it follows that items may be disallowed in a solicitor's bill taxed as between party and party, which he may be entitled to charge against his client as being proper solicitor and client costs.

Delivery of
solicitor's bill,
and taxation
by client.

A solicitor before he can sue a client for his bill of costs, must have delivered it signed, or with a letter signed, a month previously (*h*), unless he can shew that there is probable cause to believe that his client is about to quit England, or to become a bankrupt, or a liquidating or compounding debtor, or to take any other steps or do any other act which in the opinion of the Judge would tend to defeat or delay such solicitor in obtaining payment, when leave may be given him to sue notwithstanding the month has not expired (*i*). Every client has a right to have his solicitor's costs taxed ; within a month of the delivery of the bill he may obtain an order for taxation as of course ; after a month, he may still obtain this order on application *ex parte* by summons ; but after the expiration of twelve months, or after payment, he can only obtain an order to tax on shewing special circum-

(*g*) Order LXV. r. 8.

(*h*) 6 & 7 Vict. c. 73.

(*i*) 38 & 39 Vict. c. 79

stances—*e.g.*, gross overcharge, or that the bill was paid under protest. If on taxation less than one-sixth is taxed off, the client has to pay the costs of the taxation; but if one-sixth is taxed off, then the solicitor has to pay such costs (*k*).

If in any case it appears to the Court or a Judge that costs have been incurred improperly or without any reasonable cause, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so incurred to shew cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require), why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require (*l*).

Disallowance
to a solicitor of
costs in certain
cases, &c.

(*k*) 6 & 7 Vict. c. 73, s. 37. See further as to solicitors' costs, 33 & 34 Vict. c. 28, and 44 & 45 Vict. c. 44, and general order thereunder of 1882. See also hereon Arch. Pr. 13th ed. pp. 120–133.

(*l*) Order LXV. r. 11. See further, as to Taxation of Costs, post, pp. 203–205.

CHAPTER VI

ARBITRATION.

THE subject of arbitration may occur either in the Queen's Bench or the Chancery Division, but, as more frequently occurring in the former, it would appear most convenient to deal with the subject in this place, at the end of the ordinary proceedings in an action.

Arbitration may be defined as the settling of disputes otherwise than in the ordinary way, by some person or persons specially chosen by the parties or by the Court.

It may occur in two ways (1) Compulsorily ; (2) By Consent.

1. Compulsory
arbitration.

Firstly. As to Compulsory Arbitration.

Provision of
C. L. P. Act.
1854.

This takes place under the provisions of the Common Law Procedure Act, 1854 (*m*), which enacts that, "If it be made to appear at any time after the issuing of the writ to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he shall think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to

(*m*) 17 & 18 Vict. c. 125. Order xxxvi. r. 10 provides that nothing in that order shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to Arbitration.

an officer of the Court, or, in country causes, to the Judge of any County Court, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge, or the award or certificate of such referee, shall be enforced by the same process as the finding of a jury upon the matter referred" (*n*). This is an enactment of importance, and not only may an order be made under it on the application of either party by summons, but a Judge at *nisi prius* may also make an order under it (*o*).

If under such a compulsory reference a question of law arises, provision is made for a special case to be stated, and if any question arises on it which ought to be tried by a jury, an issue or issues may be directed to be tried (*p*). Special case on points of law, &c.

The provisions of the Judicature Acts before detailed as to referees (*q*) must not be confused with the foregoing enactment. The Judicature Acts have not taken away the power above given to refer to arbitration, and in such an arbitration an arbitrator cannot be required to report, but his decision is final, and not liable to be reviewed by the Court, except on the grounds on which an award might have been reviewed prior to the Judicature Act, 1873 (*r*). Arbitration different from reference to referee.

The order for reference being made, the arbitrator must make his award within three months after his appointment and entering on the reference, or his being called upon to act by a notice in writing, unless the order of reference contains a different limit of time. The time may, however, be enlarged by consent of the Time for making award.

(*n*) 17 & 18 Vict. c. 125, s. 3.

(*o*) Arch. Pr. 13th ed. p. 1379.

(*p*) 17 & 18 Vict. c. 125 s. 4. See also sect. 5.

(*q*) Ante, pp. 30, 31.

(*r*) *Cruikshank v. The Floating Swimming Bath Co.*, L. R. 1 C. P. D. 260; 45 L. J. C. P. 684.

parties in writing. The award need not be stamped, but it must be signed by the arbitrator (s).

**Setting aside
award.**

All applications to set aside any award made on a compulsory reference must be made within the first seven days of the term next following the publication (t). The power of the Court to set aside awards on compulsory references is the same as on references by consent (u); and in addition it is provided that any party to such reference may appeal from the arbitrator's award upon any question of law, and the Court has power to set aside the award on any ground on which the Court might set aside the verdict of a jury. Any such appeal is to a Divisional Court, and such Court has power to set aside the award, or to remit all or any of the matters in dispute to the arbitrator, or to make such other order with respect to the award as may be just (x).

**Enforcing
award.**

Any award made on a compulsory reference is enforced in the same way as the finding of a jury upon the matters referred, and by the authority of a Judge, on such terms as to him may seem reasonable, at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed (y).

**2. Arbitration
by consent.**

Secondly. As to Arbitration by Consent (z).

**Submission
must be made
a rule of court.**

Irrespective of the compulsory order of reference before referred to, the parties to an action may always agree to an order of reference, and in addition, if no action is pending, any matters in dispute may usually be referred by agreement in writing. The Court has no jurisdiction over the matter until the submission is made a rule of Court, but any such submission may

(s) 17 & 18 Vict. c. 125, s. 15.

(t) Sect. 9.

(u) Arch. Pr. 13th ed. p. 1381. As to which see post, pp. 155, 156.

(x) Order LIX. r. 3.

(y) 17 & 18 Vict. c. 125, ss. 3, 10.

(z) See fully as to this subject, Arch. Pr. 13th ed. pp. 1306-1377.

be made a rule of Court upon the application of any party thereto, unless there is any provision in it to the contrary (a).

An arbitrator may be named in the submission, but where this is not so, if the submission provide that the reference is to be to a single arbitrator, and all the parties cannot agree in his appointment, or if any appointed arbitrator die or cannot act, or if where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator they do not appoint him, or if he being appointed refuse to act, die, or become incapable of acting, and the parties or arbitrators do not appoint a new one, then and in every such case, in the absence of anything to the contrary in the submission, any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, it is lawful for a Judge, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator as the case may be, who shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties (b).

Appointment
of arbitrator,
umpire, &c.,
when not
named in
reference.

When the reference is to two arbitrators, one appointed by each party, it is lawful for either party, in the event of the death, refusal to act, or incapacity of any arbitrator appointed by him, to appoint a new arbitrator, unless the submission provides to the contrary; and if one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid,

Failure to
appoint
arbitrator, &c.

(a) 17 & 18 Vict. c. 125, s. 17. But although this is so, the submission should contain an agreement that it should be made a rule of Court, as otherwise it may be revoked, even although it may have been made a rule of Court. *In re Rouse*, L. R. 6 C. P. 212.

(b) 17 & 18 Vict. c. 125, s. 12.

for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him is as binding on both parties as if the appointment had been by consent (c).

Mode in which
reference to be
conducted,
time for
award, &c

The mode of conducting an arbitration depends much on the circumstances of the case, but the matter should be gone into and the evidence heard by all the arbitrators, and they have power to administer oaths and hear witnesses. If the submission limits no time, the arbitrators should make their award within three months after appointment and entry on the reference, or being called upon to act by a notice in writing from any party; but the parties may by consent in writing enlarge the time for making the award. The attendance of witnesses before arbitrators may be enforced by rule or order (d).

Questions of
law arising.

If in the course of the reference any question of law arises, it may be stated in the award in the form of a special case for the opinion of the Court (e).

Appointment
of umpire, &c.

Where a matter is referred to two arbitrators, it is usual to provide in the submission that if the arbitrators shall not agree upon their award before a time therein specified, the matter shall be referred to an umpire who is either named in the submission or else power is given to the arbitrators to appoint one. In this latter case the umpire should be appointed at the time and in the mode directed by the submission, but, unless there is anything therein to the contrary, the arbitrators may appoint the umpire at any time before or after the time limited for them to make their

(c) 17 & 18 Vict. c. 125, s. 13.

(d) Arch. Pr. 13th ed. pp. 1324-1334.

(e) 17 & 18 Vict. c. 125, s. 5.

award, provided it be before the time limited for the umpire to make his umpirage, and they may in general do so even before they have themselves entered upon an examination of the matters referred to them. Where the reference is to two arbitrators and the terms of the document authorizing it do not shew that it was intended there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner. In general, the umpire should examine the witnesses himself, but by agreement of the parties he may receive the evidence from the arbitrators (*f*).

The arbitrator's power over the costs of the reference depends entirely upon the terms of the submission; if by the submission the costs are to abide the event, then the arbitrator has no power over them (*g*). Costs of arbitration.

The award is signed by the arbitrator, and usually in the presence of a witness; when made it is duly stamped, and notice is given by the arbitrator to the parties or their solicitors that it is ready for delivery, and that each of them may have his part on the day therein specified on payment of expenses. The award is only strictly deemed published from the time of such notice, but so far as to determine the arbitrator's authority and render him *functus officio*, an award is deemed published from the time of execution (*h*). Making and publishing award.

An award is liable to be set aside on various grounds, —*e.g.*, misconduct of the arbitrator; the award not pursuing the submission; that the arbitrator has exceeded his authority; that the arbitrator has not dealt with all the matters referred to him; that the award Grounds for setting aside award.

(*f*) Arch. Pr. 18th ed. pp. 1332, 1333.

(*g*) Ibid. p. 1346.

(*h*) Ibid. 1352.

is uncertain ; or that the award is inconsistent. Many objections, however, which otherwise would be fatal to the award may be waived by proceeding with the reference with a knowledge of the same or the like, but the evidence of waiver ought to be clear (*i*).

Time for
moving to set
aside award.

An application to set aside an award made on a submission to arbitration may be made at any time before the last day of the sittings next after such award has been made and published to the parties (*k*).

Mode of pro-
ceeding to set
aside award.

If the submission to arbitration is not by rule or order, and it is desired to set the award aside, the first step towards doing so is to make the submission a rule of Court, for the Court has no jurisdiction in respect of it until this is done. It is made a rule of Court in this way:—An affidavit is made of the due execution of the submission, and also verifying any enlargements of the time for making the award. No actual motion is made, all that is necessary for the purpose being a side-bar rule, that is to say, counsel's signature is obtained to a motion paper indorsed to make the submission a rule of Court. This, with the appointment, submission, &c., is taken to the proper office and the rule is then at once drawn up as of course (*m*). This preliminary step being taken, no rule *nisi* as formerly is applied for (*n*), but notice of motion is given to set the award aside, which notice of motion must state in general terms the grounds of the application, and there must be served with it a copy of any affidavit intended to be used in support of it (*o*).

Enforcing
award.

Where the submission is by or has been made a

(*i*) Arch. Pr. 13th ed. p. 1357.

(*k*) Order LXIV. r. 14.

(*m*) Arch. Pr. 13th ed. p. 1318.

(*n*) Order LII. r. 2.

(*o*) Ibid. r. 4.

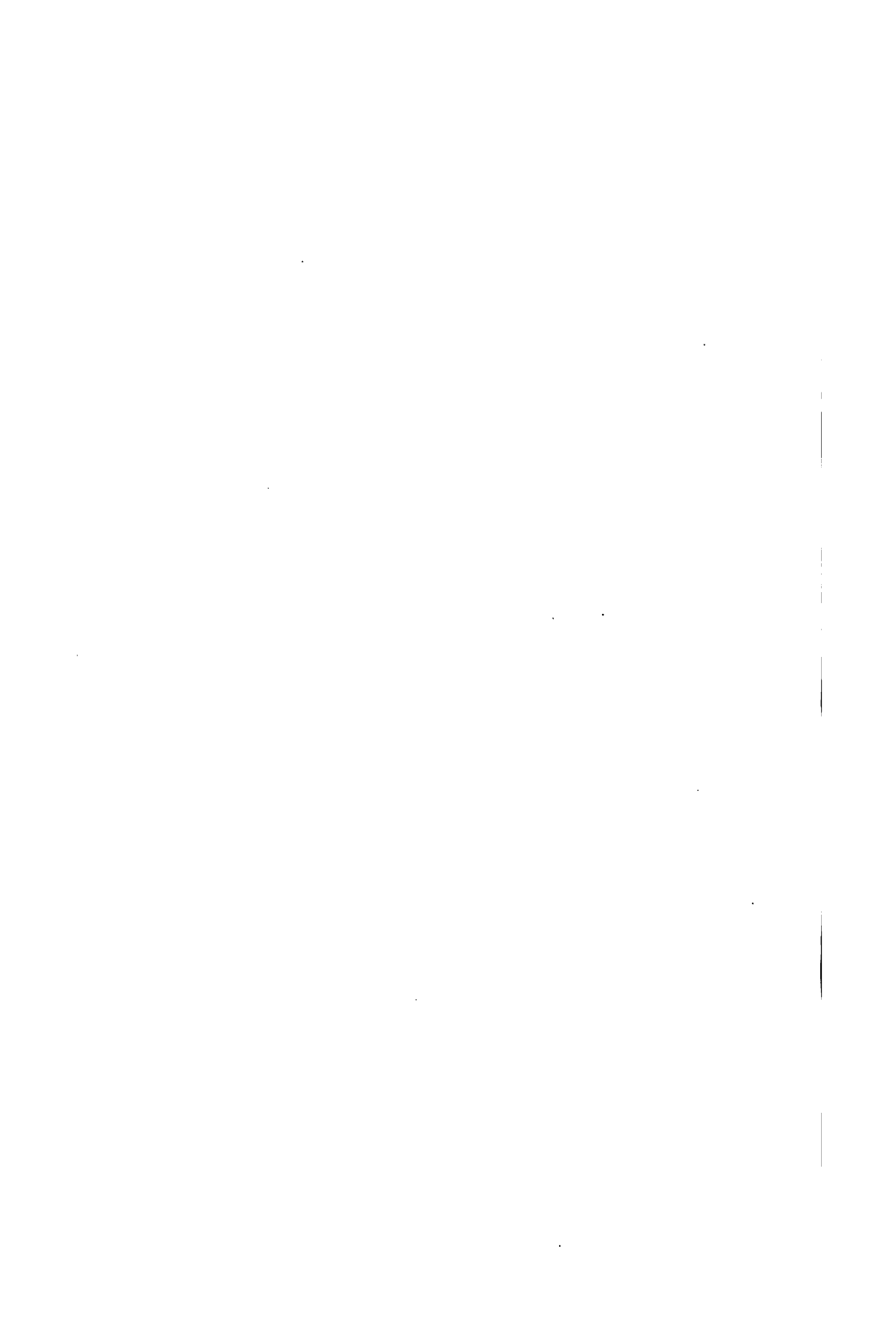
rule of Court, or is by Judge's order, the performance of the award may be enforced in the same way as any other judgment or order of the Court (*p*). Where the submission cannot be made a rule of Court, the only means of enforcing the award is by action (*q*).

Costs may be taxed on an award, notwithstanding Taxing costs
the time for setting the same aside has not elapsed (*r*). on award.

(*p*) As to which see ante, pp. 133-142.

(*q*) Arch. Pr. 13th ed. p. 1365.

(*r*) Order LXV. r. 15.



PART III.

OF THE PRACTICE AS SPECIALLY OCCURRING IN THE CHANCERY DIVISION.

INTRODUCTORY.

BEFORE commencing this Part of the work, the student must be reminded of what has already been noticed (s), viz., that a great object of the Judicature Acts was to assimilate the two previous practices of Law and Equity as far as possible. This it was impossible to do altogether, because of the different kinds of cases coming under the cognisance of the Queen's Bench Division on the one hand, and the Chancery Division on the other; and had there been no such difference, there would have been no necessity for the marking out of the Court into Divisions. But as far as possible—that is to say, in all those proceedings which are necessary to be taken equally in all the Divisions—the steps are the same; and therefore in the present part of this work, wherever this is so, and the matter has already been dealt with in Part II., it is not again referred to, or at most passing reference only is made, without going again into explanation, as that would be mere useless repetition. On all such points, therefore, if the student has not become thoroughly conversant with them from his perusal of Part II., he must refer back, and, as far as possible, references will be found given throughout to the prior pages in which the subject is dealt with. Generally it must be remembered that the practice is common to both Divisions.

(s) *Ante*, p. 11.

CHAPTER I.

PROCEEDINGS TO THE FIRST HEARING AND JUDGMENT.

**Commencing
proceedings.**

**Assignment to
particular
judge.**

PROCEEDINGS are usually commenced by action, the first step in which is the writ of summons (*t*), but there are, in addition, certain special ways in which in some cases proceedings may be commenced—viz., by petition, motion, summons and special case. These are, however, dealt with subsequently in Chapter V. of this Part (*u*). The writ of summons must be marked with the name of one of the Judges of the Division to whom for the time being Chambers are attached, and it is then treated as assigned to that Judge; but no plaintiff is to have the right of selecting his Judge, as was the case before the new Rules of 1883, but it is to be the duty of the officer issuing the writ to mark the same with the name of one of such Judges, to be ascertained in the manner hitherto used in the distribution of business amongst the conveyancing counsel of the Court, that is to say, by rota. After assignment in this way every subsequent writ, summons, or proceeding relating to the administration of the same trust or the winding up of the same company, or so connected therewith as to be conveniently dealt with by the same Judge, shall whenever practicable be marked by the proper officer with the name of such Judge, and the party or solicitor presenting such writ, summons or petition shall, if there be to his knowledge such relation or connection, so certify (*x*). The Lord Chancellor has full power to transfer actions from one Judge to another

(*t*) Ante, p. 45.

(*u*) Post, p. 206.

(*x*) Order v. r. 9.

generally or for the purposes of hearing a trial only (y) or for the disposal of any particular application (z).

If the plaintiff sues or the defendant or any of the defendants is sued in a representative capacity, which is frequently the case in this Division, the indorsement of the writ must shew in what capacity the plaintiff or defendant sues or is sued (a).

Service having been effected, the next step is the appearance of the defendant (b).

The course to be pursued in the event of the non-appearance of the defendant to the writ is usually utterly different to that in the Queen's Bench Division, dealt with in Part II. (c), though of course there may be cases in which it is not so; that is to say, in which the action is of such a kind that it could properly have been assigned to the Queen's Bench Division, had the plaintiff so chosen. It follows naturally that the practice should here be different, for the plaintiff is usually suing for something going far beyond a mere judgment by default—*e.g.*, he may be seeking administration of some estate with special inquiries, the propriety of which the Court must consider.

The effect, then, of non-appearance to the writ is this, viz., that upon the plaintiff filing a proper affidavit of service, and if the writ is not specially indorsed under Order III., Rule 6 (d), of a statement of claim, the action proceeds in the same way as if the defendant had appeared (e); that is to say, that the plaintiff will go to a hearing, proceed afterwards in Chambers, and then to conclusion, as hereafter detailed, in just the same manner as if the defendant was before the Court,

(y) Order XLIX. rr. 1, 2.

(z) Ibid. r. 4.

(a) Order III. r. 4.

(b) Ante, p. 54.

(c) See ante, pp. 54–56.

(d) See ante, p. 47. I would remind the student that in an action on a trust the writ may be specially indorsed.

(e) Order XIII. r. 12.

except that the truth of his statements are taken to be admitted. Any pleading is in the case of non-appearance filed in the Master's office (*f*), or in the district registry, as the case may be (*g*).

Pleadings.

After appearance the pleadings then take place, and the general rules to be observed as to their delivery and otherwise are the same as in an action in the Queen's Bench Division (*h*); and here the only point necessary to specially notice is the effect of the defendant making default in delivering his statement of defence. In the same way that the effect of non-appearance is different, as just stated, so the effect of this default in pleading is usually entirely different from what it would be in the Queen's Bench Division, and for the same reasons. The result here is this—viz., that the plaintiff may set down the action on motion for judgment so as to have the cause heard in the same way as if no default had been made (*i*). If there are several defendants, and one only makes default, the plaintiff may either set down the action at once against him, or wait till it is entered for trial, or set it down on motion for judgment against the other defendants (*k*).

Motion for judgment.

The subject of proceeding by means of motion for judgment has been already referred to in Part II., as far as was there necessary (*l*). It demands some few further remarks here specially applicable to Chancery Procedure. A motion for judgment is not treated as an ordinary motion (*m*), but it is set down in the Cause Book in the same way as if notice of trial had been given. The notice should be served two clear days at least before the day named in it as the day when the motion will be made, and the notice must be given

(*f*) Formerly called the Record and Writ Clerks' office, but see now 42 & 43 Vict. c. 78, and Order LXI. r. 1; Order LXVII. r. 4.

(*g*) Order xxxv. r. 1.

(*h*) See ante, Part II. Chap. III. See specimen set of pleadings in an action in the Chancery Division, in Appendix II. hereto.

(*i*) Order xxvii. r. 11.

(*k*) Order xxvii. r. 12.

(*l*) Ante, pp. 127, 128.

(*m*) As to which see post, pp. 184, 185.

before it can be entered for hearing. This is the ordinary way of obtaining judgment, except where it is otherwise provided (*o*).

Assuming that the plaintiff does not proceed by motion for judgment and that issue is joined, notice of trial is then given, and the cause is entered for trial and duly comes on to be heard (*p*). As to the different modes of trial in the Queen's Bench Division and the rules governing the same, the student is referred to Part II. Chapter V. (*q*); but it is specially provided that causes or matters assigned by the Judicature Acts, 1873, to the Chancery Division shall be tried by a Judge without a jury unless the Court or a Judge shall otherwise order (*r*). Notice of trial having been given the cause is duly entered for trial at the office of the registrars whose duty it is to keep distinct lists of the causes and matters set down to be heard before each Judge of that Division (*s*). Where an order is made for a trial of a Chancery matter with a jury the course is now not for the trial to take place before the Chancery Judge, for this has been found inconvenient as tending to block up the Court and prevent the regular routine of business, but such actions are tried in the county or place named in the statement of claim, or if no place is named they are placed in the list of actions for trial in the county of Middlesex in exactly the same way as in the Queen's Bench Division (*t*).

Notice of trial,
&c.

No jury un-
less specially
ordered.

Mode of
disposal of
jury cases.

The evidence at the hearing in this Division is frequently taken by affidavit. The general rule as to evidence is certainly that in the absence of agreement between the parties it is to be *viva voce* unless otherwise ordered (*u*); but very often the parties agree that

Evidence.

(*o*) Order XL. r. 1.

(*p*) See ante, p. 115.

(*q*) Ante, pp. 115, 116.

(*r*) Order XXXVI. r. 3.

(*s*) Order LXII. r. 17.

(*t*) See Registrar's notice of February, 1877, *Warner v. Murdock*, L. R. 4 Ch. 750; 46 L. J. Ch. 121.

(*u*) Order XXXVII. r. 1. See ante, pp. 121-125.

the evidence shall be by affidavit, according to the old practice in Chancery, and as the more convenient course.

Procedure on
agreement to
take evidence
by affidavit.

The procedure when the parties have consented to the evidence at the hearing being by affidavit is as follows:—Within fourteen days after the consent, or within such time as the parties may agree upon or a Judge in Chambers may allow, the plaintiff files his affidavits and delivers to the defendant or his solicitor a list thereof (*x*); the defendant has then fourteen days after delivery of such list, or such time as the parties may agree upon or a Judge in Chambers may allow, within which he files his affidavits in answer, and delivers a like list thereof to the plaintiff or his solicitor (*y*); and the plaintiff then, within seven days after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, files affidavits in reply (if any), and delivers a list thereof to the defendant or his solicitor, and these last-mentioned affidavits must be confined to matters strictly in reply (*z*). When the evidence is thus taken by affidavit, such evidence must be printed, and the notice of trial is given at such time or times after the close of the evidence as in other cases is provided after the close of the pleadings (*a*).

Cross-exami-
nation on affi-
davits.

The witnesses who have thus made affidavits are liable to be cross-examined thereon. The course is this: within fourteen days after the expiration of the time limited for filing affidavits in reply notice may be given by either party to his opponent to produce any deponent at the trial for cross-examination, and if not produced his affidavit cannot be used as evidence without special leave, and the party requiring such production is not obliged in the first instance to pay

(*x*) Order xxxviii. r. 25.

(*y*) Ibid. r. 26.

(*z*) Ibid. r. 27.

(*a*) Ibid. r. 30.

the expenses of the witness attending at the trial (*b*). The party to whom the notice is given is usually able to arrange with his witness to attend at the trial, but he is entitled also to compel his attendance in the same way as he might compel the attendance of a witness to be examined, that is to say, by subpoena (*c*) in the ordinary way (*d*).

In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability is a party, any consent as to the mode of taking evidence or as to any other procedure, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, has the same force and effect as if such party were under no disability and had given such consent; but no such consent by any committee of a lunatic is valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy (*e*).

Affidavits may be said to consist of four parts—viz., (1) the title, consisting of the heading in the Court, the reference number, and the names of the parties (*f*); (2) the name and description of the deponent; (3) the body or contents; and (4) the jurat, that is, a statement of the place where and the date when, and before whom sworn. Affidavits are made in the first person, divided into paragraphs, numbered consecutively, and each paragraph relating, as far as may be, to a distinct subject-matter, and they must be written or printed

(*b*) Order XXXVIII. r. 28.

(*c*) Ibid. r. 29.

(*d*) Ibid. r. 8.

(*e*) Order XVI. r. 21.

(*f*) If there are more than one plaintiff or defendant, it is sufficient to state the full name of the first plaintiff or defendant respectively. and that there are other plaintiffs or defendants as the case may be, and the costs occasioned by any unnecessary prolixity in any such title are to be disallowed by the taxing officer. Order XXXVIII. r. 2.

bookwise (*g*). They must state the description and true place of abode of the deponent (*h*), and must be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory applications, when statements as to his belief, with the grounds thereof, may be admitted. The cost of every affidavit which unnecessarily sets forth matters of hearsay or argumentative matter, or copies of or extracts from documents, are to be paid by the party filing the same (*i*).

Before whom
affidavits may
be sworn.

Affidavits may be sworn in England before a Judge, District Registrar, Commissioner to administer oaths, or officer empowered under the Rules to administer oaths (*k*), and in Scotland, Ireland, the Channel Islands, or any colony or place abroad under British dominion, before any Judge, Court, notary public, or person lawfully authorized to administer oaths in such place, or before any of Her Majesty's consuls or vice-consuls in any foreign part out of Her Majesty's dominions (*l*).

Scandalous
matter.

Any scandalous matter may be ordered to be struck out of any affidavit with costs as between solicitor and client (*m*).

Illiterate or
blind deponent.

Where any affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, he must certify in the jurat that it was read in his presence to the deponent, who seemed perfectly to understand it and made his signature in the presence

Solicitor cannot
swear his own
client.

of such officer (*n*). An affidavit cannot be sworn before the solicitor or his clerk acting for the party on whose behalf the affidavit is to be used, or before the solicitor's agent (*o*).

(*g*) Order **xxxviii**, r. 7.

(*h*) Ibid. r. 8.

(*i*) Ibid. r. 3.

(*k*) Ibid. r. 4.

(*l*) Ibid. r. 6.

(*m*) Ibid. r. 11.

(*n*) Ibid. r. 13.

(*o*) Ibid, rr. 16, 17.

Strictly to entitle a person to read an affidavit it must of course have been made in the particular cause or matter, but an affidavit made in another cause or matter may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence (o). With regard, however, to evidence to be used at the trial it is provided that no affidavit or deposition filed or made before issue joined shall without special leave be received at the hearing unless within one month after issue joined notice in writing shall have been given by the party intending to use the same to the opposite party of such his intention (p). All evidence, however, taken at the hearing or trial may without any special notice or leave be used in any subsequent proceedings in the same cause or matter (q).

Reading affidavit filed in another action.

Using evidence filed before issue joined.

Evidence used at trial may be used afterwards.

To return—notice of trial having been given, the cause set down, and the briefs prepared and delivered, the action in due course comes on to be heard. At the hearing the leading counsel for the plaintiff usually opens and goes into the case, and is followed by his junior, then in like manner the respective senior and junior counsel for the defendant are heard, plaintiff's leading counsel replies, and the Judge then proceeds to give the judgment (r). This judgment, in most cases, does not dispose of the action altogether, but directs certain accounts and inquiries to be taken and made, which are proceeded with as hereafter explained (s), and the action is afterwards ultimately disposed of in the way also hereafter detailed (t).

Procedure at hearing.

(o) Order xxxvii. r. 23.

(p) Ibid. r. 24.

(q) Ibid. r. 25.

(r) See also hereon ante, pp. 124, 125.

(s) Post, Ch. II. See form of such a judgment in Appendix II. hereto.

(t) Post, Ch. IV.

Drawing up of
judgment.

The judgment pronounced by the Court has now to be drawn up. The procedure to do this is as follows :—The solicitor having the carriage or management of the proceedings (usually the plaintiff's solicitor) leaves his counsel's brief and any other necessary papers with the Registrar (*u*) who is that day attending in the particular Court, but the order may be thus bespoken by any party, and if not thus bespoken within seven days after the judgment or order is pronounced or finally disposed of by the Court or a Judge, the Registrar may decline to draw it up without leave of the Court or a Judge. The Registrar prepares a draft of the proper order, and the plaintiff's solicitor gives one clear day's notice at least to the other parties of an appointment before him to settle it, which notice may be served through the post. The solicitors of the other parties procure from the Registrar's clerk copies of the draft order, and attend the appointment in the Registrar's Chambers, produce their counsel's briefs, and any other necessary papers, and the Registrar then, in their presence, settles the judgment. If any party is not satisfied that it carries out the true order of the Court, he can bring it before the Court on a motion to vary the minutes. After it is finally settled it is engrossed, and notice of a further appointment given to pass it, which is usually a merely formal appointment at which the different solicitors examine the engrossment of the judgment, and see there are no inaccuracies in it, and approve it. If any dispute, however, should arise, recourse may be again had to the Registrar. The judgment being passed, it is stamped, and copied—or, as it is called, "entered"—in the proper book kept for the purpose, and after being sealed with the seal of the Court is delivered to the solicitor having the carriage of the proceedings. Orders which are to be acted upon by the Chancery Paymaster require to be printed (*x*).

(*u*) As to this officer, see ante, p. 26.

(*x*) See generally hereon, Order LXII.

We have now so far gone through the details of an ordinary action in this Division, taking it that it is a contested action; but many actions here are of a friendly nature, being more of an administrative than of a contentious character, or although there may at some subsequent period be contention, yet not up to this stage. For instance, in an administration suit by a residuary legatee under a will, he is as a matter of course entitled as against the executor to a judgment directing the usual accounts and inquiries, and there is nothing therefore for the defendant the executor to oppose at this stage, although subsequently in Chambers there may be many contentious points, and there may also be points in dispute at the final hearing. In such cases as this, and provided also that the case involves no question of difficulty, and is not likely to take up much time in argument, a speedy method of getting a judgment exists, viz., by having the cause heard as a short cause, a course which we must now proceed to notice.

Although the cause is intended to be heard in this way, all the pleadings *may* be gone through as usual; but this should not be so, for if the action is of this character there is no occasion for them. Where there are no pleadings, notice of trial, strictly speaking, cannot be given, for it is under the rules only to be given with the reply or after the issues of fact are ready for trial (*y*). The proper course is in such cases for the plaintiff to give notice of motion for judgment (*z*). If, however, for some reason the pleadings are delivered, then the plaintiff can proceed either by ordinary notice of trial or by notice of motion for judgment. Whichever course is adopted, the practice then is for the plaintiff's solicitor to prepare minutes of what judgment he proposes the Court shall be asked to pronounce, and submit them to the defendant's solicitor. These minutes being agreed upon between them, the plaintiff's solicitor gets from his junior counsel a certificate that the cause

(*y*) Order xxxvi. r 11, ante, p. 115.

(*z*) As to which see ante, p. 162.

is one fit to be heard short (a), and if the cause is set down on notice of trial, also a consent from the defendant's solicitor to its being so heard, and to the evidence (if any) being by affidavit. There is usually in such cases no evidence necessary. If the cause is set down on motion for judgment, no consent from the other side to its being heard 'short' is necessary, all that is required being the certificate of counsel; and if the notice of motion for judgment states that it is intended to mark the cause 'short,' no further notice of its being so marked is necessary. The cause being down to be heard and marked 'short,' it comes on very speedily, being usually placed in the paper on the first possible short cause day, there being a special day appropriated by each Judge in every week for the hearing of short causes (b), and judgment is thus obtained in a very short space of time, where, but for this special mode of procedure, months might possibly have elapsed. The judgment being pronounced, it is drawn up as before mentioned (c).

The judgment being thus in existence, whether from an ordinary hearing or from a hearing as a short cause, the next subject to be considered is that of the proceedings thereunder in Chambers, which is dealt with in the next chapter.

Action to
perpetuate
testimony.

It may be convenient here to notice one particular kind of action in which there are no proceedings in Chambers, and which indeed is not set down for trial, and that is an action to perpetuate testimony, a kind of procedure which though of rare practical occurrence is by no means obsolete, and which it has been thought worth while to regulate by the rule of 1883, though the subject hardly demands attention here (d).

(a) It is usually considered that the cause should be one which on an average will not occupy more than about ten minutes of the Court's time.

(b) Before a short cause comes on to be heard certain necessary papers should be left with the Judge's secretary, viz., a set of the pleadings, if any, and if not, a copy of the writ, and also two copies of the proposed minute of judgment.

(c) Ante, p. 168.

(d) Order xxxvii. rr. 35-38.

CHAPTER II. (d).

PROCEEDINGS IN CHAMBERS UNDER THE JUDGMENT.

THE first step is for the plaintiff's solicitor to make a copy of the judgment in the action, and to certify at the end thereof that it is a true copy (e). He then carries the same into the Judge's Chambers, and at the same time lodges there a note stating the names of the solicitors for all parties, and shewing for which of the parties such solicitors are concerned (e). He then takes out a summons to proceed on the judgment, and serves the same upon the other solicitor or solicitors in the action. If he does not do this within ten days after the passing and entering of the judgment any other party to the cause or matter may do so (f).

At the return of the summons the solicitors attend before the Judge's Chief Clerk (g), who should first satisfy himself that he has all necessary parties (h) before him or that they have all been served with notice of the judgment (i), and if not he should direct them to be so served, and until after this is done he should not proceed except to the extent of giving directions for insertion of advertisements for creditors and for leaving accounts

(d) On the subject of this chapter generally, and on any points occurring in it as to which no reference is given, and on which the student is desirous of further information, he is referred to Order LV., containing the general regulations on the subject, and also to Daniel's Ch. Pr. ch. xxix. pp. 1039-1227. Haynes' Chancery Pr. pp. 391-448.

(e) Order LV. r. 28.

(f) Ibid. rr. 30, 32.

(g) As to this officer, see ante, pp. 25, 36.

(h) It may be mentioned that in a cause or matter to execute the trusts of a will, it is not necessary to make the heir-at-law a party, but the plaintiff is at liberty to make the heir-at-law a party when he desires to have the will established against him. Order XVI. r. 45.

(i) Order LV. r. 33.

in Chambers (*k*). Thus in administration suits, the action may be brought by one of several residuary legatees, though of course the others have equal rights with him, and here it would be necessary to serve them all with notice of the judgment. Also in most cases of administration and execution of trusts it is not necessary to make all persons interested parties to the proceedings (*l*), but they are served with notice of the judgment. After all parties interested have been thus served, they are bound by the proceedings, as if they had been originally made parties and are at liberty to attend the proceedings, and may within one month after service apply to the Court or a Judge to discharge, vary, or add to the judgment or order (*m*). The service is effected by giving the party a written notice setting out the judgment, and on it is indorsed a memorandum that he will become bound by it, but may apply to vary it within a month, and that he may enter an appearance and attend proceedings (*n*). If the party to be served is an infant or person of unsound mind not so found by inquisition, service is effected in the same way as a writ of summons in the action (*o*).

Service on
infants.

Appearance of
persons served
with notice of
judgment.

No person served with notice of a judgment need obtain an order for liberty to attend proceedings, but is at liberty to attend them upon entering an appearance in the Central Office in the same way as if he was a defendant (*p*), and the Judge may if he thinks fit require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition who has been served with notice of judgment (*q*). It does not however follow that every person served has a right to attend proceedings at the expense of

(*k*) Order XVI. r. 40; Order LV. r. 36.

(*l*) Order XVI. rr. 33-39.

(*m*) Ibid. r. 40, and see Form No. 28 in Appendix G. to Rules of 1883.

(*n*) Ibid. rr. 42, 43.

(*o*) Ibid. r. 44, ante, p. 48.

(*p*) Ibid. r. 41, ante, p. 54.

(*q*) Order LV. r. 27.

the particular estate or fund in question, for with regard to any party's attendance generally,—and this applies not merely to parties attending proceedings, but to original parties also,—it is provided that where the Judge considers the interests of the parties can be classified, he may require the parties constituting each or any class to be represented by the same solicitor, and he may direct what parties may attend all or any part of the proceedings, and where the parties constituting any class cannot agree upon the solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being thus represented separately (*r*). If no such classification order has been made, or any person was served with notice of judgment after its making, any person so served should if he desires to attend at the expense of the estate or fund, take out a summons for that purpose, when an order may be made if it appears proper (*s*).

Where upon the hearing of the summons to proceed it appears to the Judge that by reason of absence or for other sufficient cause, the service of the notice of the judgment or order upon any party cannot be made, or ought to be dispensed with, the Judge may if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice, by advertisement or otherwise in lieu of such service (*t*).

(*r*) Order LV. r. 40.

(*s*) Ibid. r. 42.

(*t*) Ibid. r. 35.

Directions
given on
summons to
proceed.

The matter of parties having thus received the Chief Clerk's attention, he next gives directions as to the manner in which and by whom each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the time within which each proceeding is to be taken, and generally all necessary directions, and appoints a day for further attendance before him. To properly understand these proceedings in Chambers, however, it will be best to take as an instance one particular kind of action and follow it throughout, say an ordinary administration action against an executor or administrator (*u*). In noticing the main points in this one instance, the student must bear in mind that although it is but an instance, it shews the general details of the working out of a judgment in Chambers in any case, the only distinction being that different kinds of cases involve different accounts and inquiries, and to particularize individual cases is beyond the scope and object of the present work. If the student understands one case thoroughly that is sufficient, for the general practice is always the same.

Instance of an
administration
action.

Advertisement
for creditors.

To take, then, the instance of an ordinary administration action just mentioned. At the return of the summons to proceed, the Chief Clerk directs the plaintiff's solicitor to insert an advertisement in certain newspapers for creditors to come in and prove their claims. This advertisement is always directed to be inserted in the *London Gazette*, and usually in *The Times* and other chief London morning daily newspapers, or one of them, and if a country case, also in two local papers (*x*).

(*u*) In the Appendix II. hereto, is given a form of an administration judgment or order containing the most usual accounts and inquiries in an ordinary administration action.

(*x*) Order LV. rr. 44-48. Where the personal representative has already issued advertisements under 22 & 23 Vict. c. 35, s. 29, no further advertisements are generally directed to be inserted. Daniel's Ch. Pr. p. 1094.

If there is any question of pedigree involved, ^{Inquiry as to pedigree.} advertisements may also be directed to be inserted (y) and the Chief Clerk directs the plaintiff's solicitor to bring in evidence thereon by a certain day, and he also directs the accounts of the defendants, the personal ^{Accounts.} representatives, to be brought in duly verified by affidavit, and any other necessary facts to be proved by affidavit by a certain day.

The next thing is for the respective solicitors to ^{Carrying out Chief Clerk's directions.} proceed to carry out the directions given by the Chief Clerk, so as to be ready to proceed at the appointment which has been given for the further attendance before him. The plaintiff's solicitor prepares the ^{Preparing and inserting advertisement.} advertisement for creditors to come in and prove their claims, which is signed by the Chief Clerk and then inserted in the various papers as directed. This advertisement is in an established form (z), and usually requires all claims to be sent in by a certain day to the solicitor for the defendants, the personal representatives, and it also names a day for all claimants to appear before the Chief Clerk, which is called an appointment to adjudicate on claims, ^{Appointment to adjudicate on claims.} but at it no creditor need make any affidavit, or attend in support of his claim (except to produce his security), unless he is served with a notice requiring him to do so (a), but an affidavit is made by the personal representative or his solicitor or both (b) seven clear days prior to the application to adjudicate on claims, stating what claims have been sent in, and which it is considered should be admitted and which not, and the reasons for this; and then, if necessary, directions may be given for any claimants to prove their debts strictly, and the appointment to adjudicate on claims may be adjourned for this purpose, and the creditors must have a seven days'

(y) Order LV. r. 44.

(z) Ibid. r. 47, and forms 2 and 3 in Appendix L. to Rules of 1883.

(a) Ibid. rr. 49, 50.

(b) See form in Appendix II. hereto.

notice of the time to which the appointment has been adjourned, service of such notice through the post directed to the address given in the claim or the address of the solicitor mentioned in the claim (if any) being sufficient. If no claims have been sent in under the advertisement, an affidavit of no claims is made (c).

Affidavit of no claims.

Proof by creditor of his claim. A creditor who is required to prove his claim proves it by affidavit in the ordinary way; he is not, however, required to take an office copy, but the person who examines the claim takes the office copy (d). If he establishes his claim an amount for his costs of proving it is fixed and added to the debt established (e), and there is added to the debt interest thereon at such rate (if any) as the party may be entitled to, and in other cases 4 per cent. per annum calculated from the date of the judgment or order, and any creditor whose debt does not carry interest gets his 4 per cent. interest if sufficient assets remain after satisfying the costs of the cause or matter, the debts established, and the interest on such debts as by law carry interest (f). After the time fixed by the advertisement no claims are received, except by special leave on application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge thinks fit (g).

Attendance on claims.

In any cause or matter for the administration of the estate of a deceased person, no party to the cause other than the executor or administrator is, unless by leave of the Court or a Judge, entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause, against the estate of the deceased in respect of any debt or liability. The Court or a Judge may direct any other party to the cause to appear either in addition to or in the place of the executor or

(c) Order LV. rr. 52-56, 61.

(d) Ibid. r. 48.

(e) Ibid. r. 58.

(f) Ibid. rr. 62, 68.

(g) Ibid. r. 57.

administrator upon such terms as to costs or otherwise as they or he shall think fit (*h*).

If, as suggested in our instance, there is any point Pedigree. as to pedigree, an affidavit is made by the plaintiff, or some person conversant with the facts, proving any marriages, births, and deaths necessary under the circumstances to be proved. The affidavit should have exhibited to it the certificates of the respective marriages, births, and deaths; and, in addition to this, for the sake of convenience, it is usual to prepare and carry into Chambers a pedigree which shews at a glance the position as proved by the affidavits. At the adjourned appointment before the Chief Clerk, the affidavits, &c., are considered, and what is proved duly noted down by him. It may be that he is satisfied that the evidence adduced properly answers the inquiry, or it may be that he directs some further evidence to be obtained, in which case the appointment is then adjourned, and so on, from time to time, until he is satisfied.

Then as to accounts—these are duly prepared Affidavit by the solicitor of the personal representative, and by personal representative exhibited to an affidavit by the personal representative on accounts verifying them (*i*); and in addition, the affidavit, and inquiries, to satisfy several other requirements of the judgment, ordinarily states the amount of the deceased's funeral expenses, and gives in a schedule a statement of what his estate consisted at the time of his decease, and of what it consists at that time. This affidavit (*k*) and the accounts are laid before the Chief Clerk at the appointment which has been given before him; the affidavit at once answers any inquiry in the judgment of what the funeral expenses amounted to, of what the estate consisted at the deceased's death, and of

(*h*) Order xvi. r. 47.

(*i*) Order xxxiii. r. 4.

(*k*) See a form in Appendix II. hereto.

what it consists then; and the Chief Clerk having seen that the affidavit and accounts are in proper form, refers the latter to one of his junior clerks for the purpose of the items therein being vouched.

**Vouching
accounts.**

The plaintiff's solicitor then obtains an appointment before the junior clerk to vouch the accounts. At the day appointed the solicitors attend, and the solicitor for the personal representative proceeds to vouch by producing all necessary vouchers, such as receipts, &c. Where any item of payment is under forty shillings, no voucher is generally required, the oath of the accounting party being considered sufficient (*l*). Special directions may be given by the Court or a Judge as to the mode in which accounts are to be taken and vouched, and generally with regard to them (*m*).

**Surcharging
and falsifying.**

Any party who is dissatisfied with the accounts may enter into evidence to shew that certain moneys have been received which are not accounted for, which is called surcharging; or that certain items of payment are wrongly inserted, which is called falsifying. The junior clerk at the appointment, or any adjournment thereof, disposes of the accounts as far as he is able; and if there are then any items not properly vouched, or the propriety of which is objected to, he queries the same for the Chief Clerk. On any such queries an appointment is obtained before the Chief Clerk, and he considers the same and disposes of them (*n*).

**Queries on
accounts.**

**Assistance of
experts.**

The Judge in Chambers may in such way as he thinks fit obtain the assistance of accountants, merchants, engineers, actuaries, and other scientific persons, the better to enable any matter at once to be determined, and he may act upon the certificate of any such person (*o*).

(*l*) Daniel's Ch. Pr. p. 1128.

(*m*) Order xxxiii. r. 3.

(*n*) See generally as to Accounts, Order xxxiii.

(*o*) Order lv. r. 19.

Taking it, then, that the accounts are disposed of, Chief Clerk's and all inquiries directed by the judgment duly certificate. answered, the next step is the preparation of the Chief Clerk's certificate, which is a document whereby the Chief Clerk specifically states or certifies to the Court the result of the accounts and inquiries that have been referred to him (*p*). The Chief Clerk being satisfied that everything necessary has been done, adjourns the proceedings for the certificate. The plaintiff's solicitor then leaves with one of the junior clerks at Chambers, whose duty it is to prepare certificates, all necessary documents, such as office copies of affidavits, &c., and from these documents and the notes of the proceeding in Chambers this official prepares the draft certificate (*q*). Adjourning for certificate.

The draft being prepared an appointment is obtained before the junior clerk to settle it. The solicitors then attend; it is gone carefully through, and any queries on it disposed of as far as possible, either at this appointment or any adjournment that may be necessary, and an appointment is then obtained before the Chief Clerk, who finally goes through it and disposes of any queries that may yet remain; and any party may before the proceedings before the Chief Clerk are concluded take the opinion of the Judge upon any matter arising in the course of the proceedings (*r*). The certificate is then engrossed and signed by him and is complete, no signature by the Judge being necessary, and it is then filed (*s*). Settling certificate.

In all actions for the administration of a testator's estate there is an inquiry in the judgment as to legacies. This inquiry is of course answered by reference to the will; and in the Chief Clerk's certificate, which amongst other things certifies the legacies, interest is computed Certifying legacies and interest thereon.

(*p*) Order LV. r. 65.

(*q*) Ibid. rr. 66-68.

(*r*) Ibid. r. 69.

(*s*) Ibid. rr. 65, 70.

and certified thereon after the rate of 4 per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will (*t*).

Application to
vary certi-
ficate.

But notwithstanding the Chief Clerk's certificate is thus made and filed, there is yet a course open to a party dissatisfied in any respect with it—viz., to take out a summons or give a notice of motion to vary it, which must be done within eight days after the filing, and if the application is not made within that time, the certificate is binding on all parties, unless indeed by special leave it is opened, which will only be done on some very strong case being made out (*u*). On the return of the summons to vary, it is not usually dealt with in Chambers, but is adjourned into Court; and as the cause will now be usually about to come on for final hearing on further consideration it is generally adjourned to come on at the same time.

When certi-
ficate binding.

Conclusion of
ordinary pro-
ceedings in
Chambers.

This concludes the ordinary proceedings in Chambers, and even at the risk of repetition it would seem well to again remind the student that this instance we have gone through should be sufficient to supply him with a general knowledge of the proceedings in Chambers in working out any accounts and inquiries directed by any judgment. The accounts and inquiries may all be different in their nature, but still the steps are the same, the proceedings always concluding with the Chief Clerk's certificate.

Additional
accounts and
inquiries.

Where in the prosecution of a judgment or order it appears to the Judge that it would be expedient that further accounts should be taken or further inquiries made, he may order the same to be taken or made

(*t*) Order LV. r. 64.

(*u*) Ibid. r. 70. The time to apply to discharge or vary any certificate to be acted upon in the Paymaster-General's office without further order or certificate on passing Receivers' accounts, is two clear days from filing (Ibid.).

accordingly, or if desired by any party, may direct the same to be considered in open Court; but such accounts or inquiries must be auxiliary to, and not at variance with, the judgment pronounced by the Court. An application for such further accounts and inquiries is made by summons, which must be served on all parties, and also on persons who are attending the proceedings, and the additional accounts and inquiries should be numbered consecutively in continuance of the numbers of the original accounts and inquiries directed (x).

As to attendance in Judge's Chambers, where by reason of the non-attendance of any party, or by reason of neglect in not being prepared with any proper evidence, accounts, or other proceedings, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending, by the party so absent or neglectful, or by his solicitor personally, and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested (y).

Neglect to attend appointments, &c.

Before concluding this chapter it seems advisable to detail the proceedings in Chambers in the case of a sale under the Court, as this very often forms an important part of the working out of a judgment, as it may direct a sale of certain property (z).

Sales under the Court.

The peculiarities in a sale under the Court are mainly these:—The Chief Clerk first directs who is to have the conduct of the sale, and this will usually be the plaintiff's solicitor, subject to a new provision in

Special points.

(x) Haynes' Chancery Pr. p. 420. Order xxxiii. r. 2.

(y) Order lxv. r. 27 (13).

(z) It has been considered best to notice this here, although it might have been treated of in Chap. III. as an interlocutory proceeding, as a sale may be directed by some interlocutory order. The proceedings, however, are in both cases identical.

the Rules of 1883, to the effect that whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator or trustee, the conduct thereof is to be given to the executor, administrator or trustee, unless the Court or a Judge otherwise directs (a). The Chief Clerk appoints the day of sale, and directs in what newspapers advertisements of the sale are to be inserted, of which the *Gazette* is always one; he refers the abstract of title to one of the conveyancing counsel of the Court (b), whose duty it is to report on the title and prepare conditions of sale, which are then approved by the Chief Clerk; the Chief Clerk then appoints some person to be the auctioneer, on an affidavit of his fitness, and on his giving security (usually a bond with two sureties) settles his remuneration; he then fixes the reserved biddings, being guided in so doing by the affidavit of a surveyor, and these reserved biddings are sealed up and delivered to the auctioneer, not to be opened until the time of the sale. After the sale the auctioneer makes an affidavit of the result of the sale, and from this the Chief Clerk makes his certificate thereof. The auctioneer pays the deposit received by him into Court; the balance of the purchase-money is paid into Court by the purchaser under an order obtained by him at his own expense by a day named in the conditions of sale, and after the payment in the conveyance to the purchaser is executed and the matter completed. If any disputes arise on the form of the conveyance they may be disposed of in Chambers in the action (c).

Mode in which
purchase
money dealt
with.

(a) Order L. r. 10.

(b) As to these officers see ante, p. 28, and Order LI. rr. 7-13.

(c) Order LI. rr. 1-6; Daniel's Ch. Pr. pp. 1148-1187.

CHAPTER III.

INTERLOCUTORY PROCEEDINGS.

IN Part II., Chapter IV., under the same heading as this chapter, various interlocutory proceedings have been dealt with which are applicable not only to the Queen's Bench Division, but equally to the Chancery Division—such, for instance, as discovery. The interlocutory proceedings mentioned in the present chapter are those that would more usually only occur in the Chancery Division.

In the first place, it should be observed that every judgment directing accounts and inquiries always reserves liberty to the parties to apply in Chambers as they may be advised; but besides this, interlocutory applications may be made before there is any judgment. Interlocutory applications are made either by petition, *Petitions.* motion, or summons. A petition is a written application to the Court containing a statement of facts, and praying for a certain order, and every petition states at its foot the names of the persons on whom it is proposed to serve it, who are called the respondents. The petition is lodged at the Registrar's office, and being thus presented is answered by a direction in the name of the Senior Registrar (*d*) for the parties to attend on the day appointed for its hearing, which is called the fiat, and a copy of the petition with this fiat thereon is served on the solicitors for the respective respondents two clear days before the day appointed for hearing. Counsel are then instructed, and it comes on to be

(*d*) Order LXII. r. 18.

heard in due course, when the Court makes such order as may be just (e). It is a rule that all unopposed petitions are heard prior to those which are opposed.

Costs on
petition.

It does not always follow that because a party is served with a petition he is justified in incurring the expense of appearing by counsel at the hearing, for in many cases the respondents may be merely formal parties. It is specially provided that when a petition is served and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £1 10s. 0d. The party making such payment is allowed the same in his costs, provided such payment was proper, but not otherwise. This is, however, without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled to appear in Court, notwithstanding such notice or tender. In any other case in which a solicitor of a party served, necessarily or properly peruses any such petition without appearing thereon, he is allowed a fee of not exceeding £1 10s. 0d. (f).

Motions.

A motion is an application made to the Court without any written statement. A notice of motion is served upon the other parties to the action two clear days at least before the day named for its hearing, and this notice states that on the day therein named counsel will apply to the Court for a certain order, the effect of which is shortly stated. Counsel are then instructed on both sides, and the motion is in due course made (g). A motion is sometimes made *ex parte*, that is, on the application of one party without service of notice on any other party; but this only occurs usually when the matter is of some very pressing nature (h). For

Ex parte
motions.

(e) Daniel's Ch. Pr. pp. 1451-1461.

(f) Order LXV. r. 19.

(g) Order LII. r. 5; Daniel's Ch. Pr. pp. 1437-1451.

(h) Order LII. r. 3.

instance, if an injunction is sought against some act, directly the writ is issued the plaintiff may apply *ex parte* for an interim injunction until he has time to serve the defendant with notice of motion, and bring the same on. An *ex parte* injunction will only be granted on evidence shewing some very pressing case. All *ex parte* injunctions are necessarily interim or interlocutory injunctions; in fact all injunctions granted otherwise than at the hearing of the cause are interlocutory in their nature, the perpetual injunction being granted at the hearing. However, sometimes the parties agree to treat a motion for an interlocutory injunction as the hearing of the cause.

Where by the Rules of 1883 any application is authorized to be made to the Court or a Judge, such application is to be by motion (i); but subject to this there is not any fixed rule when an application should be made by motion and when by petition. It may, however, be stated as a general rule, that when any long or intricate statement of facts is required, the application should be by petition, whilst in other cases a motion is sufficient (k).

When application to be by petition and when by motion.

A summons is a written application made in the Judge's Chambers; every application at Chambers not made *ex parte* is by summons, and every application for payment or transfer out of Court made *ex parte*, and every other application made *ex parte* in which the Judge or proper officer shall think fit so to require, shall be made by summons (l). The summons being prepared, it is taken to the Judge's Chambers, where a day for its hearing is filled in, and it is sealed and placed in the list, and cannot afterwards be altered except upon application at Chambers (m). At its foot it is addressed to all necessary parties, and must be

Summons.

(i) Order LII. r. 1.
 (k) Daniel's Ch. Pr. p. 1434.
 (l) Order LIV. rr. 1, 2.
 (m) Ibid. r. 3.

served on the respective solicitors two clear days before the day of hearing. It then comes on to be heard before the Chief Clerk in Chambers (*n*), when the solicitors appear before him and he deals with it. If any party is dissatisfied with the Chief Clerk's decision on the summons, the Chief Clerk adjourns it to the Judge, who attends in Chambers on certain days for the purpose of hearing such cases, and he then deals with it, or he may adjourn it into Court to be there argued by counsel. Very many applications may equally be made by petition or summons, it being a point of discretion whether the matter is of sufficient importance for a petition. Ordinary instances in which a summons would always be used would be applications for discovery and inspection, for better answers to interrogatories, for leave to amend pleadings (*o*). Order LV. also specially mentions various matters which are to be disposed of in Chambers, some of which have been already mentioned (*p*).

Drawing up of orders.

Orders made on petitions or motions have to be drawn up in the same way as already pointed out as to a judgment (*q*), but with regard to matters in Chambers very often no orders are required to be drawn up, the Chief Clerk's notes of what has been done being sufficient (*r*); but any order made in Chambers may be directed to be drawn up by the Registrar (*s*), and when this is the case they are drawn up, passed and entered in the same way as orders made in Court. The Registrar is here furnished with the materials for drawing up the order from the Chief Clerk's indorsement on the back of the summons.

(*n*) It is the practice in some of the Judges' Chambers to have summonses of a less important character heard before one of the junior clerks.

(*o*) As to the practice on summonses in the Common Law Division, see ante, pp. 86, 87.

(*p*) Order LV. r. 2; ante, p. 25.

(*q*) Ante, p. 168.

(*r*) Order LV. r. 73.

(*s*) Ibid. r. 74.

For some things orders are granted as of course—Orders of course.
e.g., orders to tax solicitors' bills. All such orders are now drawn up, passed and entered by or under the directions of the Registrars of the Chancery Division (*t*).

Upon all interlocutory applications the evidence is Evidence on interlocutory applications.
 by affidavit, which need not be confined to such facts as the witness is able of his own knowledge to prove, as is the case in affidavits at the hearing of the action, but statements as to the deponent's belief, with the grounds thereof, may be admitted. The Court or a Judge may, on the application of any party to an action, order the attendance for cross-examination of any person making any affidavit (*u*).

Although, as has been shewn (*x*), all necessary ac- Interlocutory accounts and inquiries.
 counts and inquiries are ordered by the judgment, yet, for the sake of expedition, interlocutory accounts and inquiries may be directed, for the Court or a Judge may at any stage of the proceedings order any which appear necessary to be made or taken, notwithstanding that it may appear that there is some special or further relief sought, or some special issue to be tried, as to which it may be proper that the action should proceed in the ordinary way (*y*).

A very important special provision is made for the Summons under Order xv.
 purpose of expediting proceedings in the nature of accounts in Chancery—viz., by an application under Order xv. This Order may be considered as analogous to Order xiv. in the Queen's Bench Division (*z*), for they both have as their design the prevention of delay. It provides that in default of appearance to a summons indorsed with a claim for an account, and after appearance, unless the defendant by affidavit or otherwise satisfy the Court or a Judge that there is some pre-

(*t*) Order LXII. r. 18.

(*u*) Order XXXVIII. rr. 1, 3.

(*x*) Ante, p. 167.

(*y*) Order XXXIII. r. 2.

(*z*) As to which see ante, pp. 64, 65.

liminary question to be tried, an order for the account claimed with all directions usual in Chancery in similar cases shall be made. Any application for such an order is made by summons, and must be supported by an affidavit, filed on behalf of the plaintiff, stating concisely the grounds of his claim to the account. The application may be made at any time after the expiration of the defendant's time for appearing (*a*).

Importance of
Order xv.

The importance of Order xv. cannot be overrated, and applications under it have become very common in Chancery practice, for practically by means of it in many cases everything that would be granted at the hearing of the cause may be obtained under it. Particularly where the account claimed is an executorship or administration account, the usual administration decree will be made, and not merely an order for accounts (*b*).

Receiver.

An application that is often made to the Court is for the appointment of a receiver. A receiver is some independent person appointed by the Court to receive the rents and profits of real or leasehold estate, or to get in and collect personal estate or other things in question pending the suit when it does not seem reasonable to the Court that either party should do so, or when a party is incompetent to do so (*c*). Any person who is appointed receiver has to give security, which is usually a recognizance with two sureties conditioned in double the amount of the outstanding property he has to get in, or double the amount of the annual rent he has to receive. The recognizance was formerly made out to the Master of the Rolls and the senior Vice-Chancellor, but under the new practice it is to be given to the two senior Chief Clerks for the time being

(*a*) Order xv. rr. 1, 2.

(*b*) Haynes' Ch. Pr. p. 64. Order xv. in the Rules of 1883, is exactly similar to the original Order xv. under the Act of 1875.

(*c*) Daniel's Ch. Pr. p. 1563.

of the Judge to whom the cause or matter is assigned (*d*); and it has to be executed before a Commissioner to administer oaths. The practice to obtain the appointment of a receiver is to apply to the Court by motion (*e*), supported by affidavit of the fitness of the person proposed to be appointed; the recognizance is afterwards approved in Chambers. The duties of a receiver are to act according to what he is appointed for, and from time to time to pass his accounts (which are vouched in Chambers), and pay the balances into Court as directed by the order appointing him. When a receiver's duties are ended, the recognizance entered into on his appointment should be directed to be vacated, and the proper officer then, on due notice, attends one of the Chief Clerks to whom the recognizance was given, who thereupon vacates such recognizance in the usual manner (*f*).

By the Judicature Act, 1873, wider and more general powers of appointing receivers are given than formerly, it being provided that a receiver may be appointed in all cases in which it shall appear to the Court to be just or convenient that such order should be made (*g*). Formerly there were various cases in which the Court would not appoint a receiver, where now under this provision it will—*e.g.*, in the case of a person having a charge or mortgage on land, the Court would formerly only have appointed a receiver if the party had no legal title to secure him; thus a mortgagee could have no claim for one, for he could take possession under his mortgage. So wherever an annuitant had a legal charge on land under which he could have a distress no receiver could have been obtained. Now the powers given to the Court are general and discretionary.

Power of appointment of receiver under the Judicature Act, 1873.

Beyond the appointment of a receiver, an order may

Preservation of property.

(*d*) Order LX. r. 4

(*e*) Order L. r. 6.

(*f*) Order LX. r. 4

(*g*) Jud. Act, 1873, s. 25 (8).

be made for the preservation or interim custody or inspection of any property the subject of a pending action, or for it to be brought into Court or otherwise secured ; and if any property is of a perishable nature, or for other reasons it appears desirable, an order may be made for its sale (*h*). It is also provided that where by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured (*i*).

Injunction.

The Court has also, for the purpose of the preservation of property and for other purposes, a very wide power of granting injunctions, and this may be the direct object of the action, or it may be merely an interlocutory application. Both cases may, however, be dealt with in this place. This power of granting an injunction was always possessed by the Court of Chancery, and by the Common Law Procedure Act, 1854 (*h*), a like power was given in certain cases to the Courts of Common Law. Now under the Judicature Act, 1873 (*l*), very wide powers of granting injunctions are given, it being provided that an injunction may be granted whenever just or convenient, and that if an injunction is asked either before, or at, or after the hearing of any cause or matter to prevent any threatened or apprehended waste or trespass, such injunction may be granted if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or, if out of possession, does or does not claim a right to do the act sought to be restrained under any colour of title, and whether the estate

(*h*) Order L. rr. 2, 3.

(*i*) *Ibid.* r. 1.

(*k*) 17 & 18 Vict. c. 125, s. 79.

(*l*) Sect. 25 (8).

claimed by both or either of the parties is legal or equitable. An injunction may be granted as well after as before judgment in the action (*m*).

No writ of injunction is now issued. An injunction ^{No writ of injunction.} is granted by judgment or order, and any such judgment or order has the same effect which a writ of injunction previously had (*n*). The proper course to enforce an ^{Enforcing injunction.} injunction is to serve a copy of the order granting it personally on the party, and if it is not obeyed the party is liable to attachment (*o*); but notwithstanding the order has not been served, if the injunction is brought to the party's knowledge, he is liable if he acts in opposition to it. An injunction, or indeed any judgment or order, against a corporation wilfully disobeyed, may by leave of the Court or a Judge be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property (*p*).

In matters of a pressing nature a plaintiff may obtain an interlocutory injunction *ex parte* (*q*), but he ^{*Ex parte* injunction.} must make out a strong case. The writ must be issued, though it need not be first served, and the course to take to obtain an *ex parte* injunction is to move the Court on an affidavit shewing the circumstances and the urgency of the case. The Court in granting an *ex parte* injunction puts the plaintiff under terms to abide by any order the Court may thereafter make as to damages, if it shall appear that the injunction ought not to have been granted (*r*).

The Court has also full power in its discretion to *Mandamus*. grant a *mandamus* to compel the doing of any act whenever it shall appear just and convenient to do so (*s*). If a *mandamus* is granted or any order made for the specific

(*m*) Order L. r. 12.

(*n*) Ibid. r. 11.

(*o*) Order XLII. r. 7.

(*p*) Ibid. r. 31.

(*q*) Order LII. r. 3.

(*r*) See as to Injunctions, Daniel's Ch. Pr. pp. 1462-1536

(*s*) Jud. Act, 1873, sect. 25 (8).

performance of any contract, and the same is not complied with, the Court or a Judge—besides or instead of proceedings against the disobedient party for contempt—may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person appointed by the Court or Judge at the cost of the disobedient party, and upon the act being done the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained and costs (*t*).

Payment into Court.

Applications for payment into Court are almost invariably made when a party has in his hands certain moneys, the subject of the action. For instance, if an executor or administrator in any pleading or affidavit admits that he has a certain sum in hand on account of the estate, the proper course is usually to at once take out a summons for payment of such sum into Court.

Mode of payment in.

The payment into Court is effected by lodging the order (*u*) directing payment at the Chancery Pay office, where formal directions are given to the Bank of England to receive the money in accordance with the order. The directions are then taken to the Bank, and the money is paid in and duly carried to the credit of the action, or the credit of any particular account directed by the order, in the books of the Paymaster-General.

Investment.

If the order does not direct an investment of the money, it is, unless a request is made that it should not be, placed on deposit at the Bank; but if an investment is directed, the order is, after the payment in, left at the Paymaster-General's Office and the investment bespoken.

Payment into Court without order.

Money may also in certain cases be brought into Court voluntarily by a party without any order, upon the written request of the person so desirous of paying

(*t*) Order XLII. r. 30.

(*u*) It has been before noticed that all orders to be acted on in the Chancery Pay office have to be printed; see ante, p. 168.

it into Court. Such a payment in on a request only cannot be made to a separate account, but simply to credit of the cause (*x*).

If in the course of an action evidence is required by any party to it, of what money is in Court, a certificate of fund may be obtained from the Paymaster-General's Office without payment of any fee. A complete transcript of the account, shewing the dealings with it from time to time, may also be obtained on leaving a proper book for the same to be copied into, and certain fee stamps.

Cash under the control of, or subject to, the order of the Court, may be invested in Bank Stock, East India Stock, Exchequer Bills, and £2 10s. per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated, Reduced, and New £3 per cent. annuities (*y*). Of course, also, any funds in Court are liable to be invested in any mode prescribed by any settlement or will from which they arise.

If in any action brought to recover certain property the defendant sets up a lien thereon for a certain sum of money, the plaintiff may at once take out a summons to be at liberty to pay into Court, to abide the result of the action, the amount of such lien, and any further sum that may be directed for interest or costs, and that upon such payment in, the property may be given up to him (*z*).

An application is sometimes made for a writ of *ne exeat regno*. This is a writ which issues to restrain a person from going out of the kingdom without the license of the Sovereign or of the Court (*a*). It was formerly in general issued only where the claim was of

(*x*) Chancery Funds Amended Orders, r. 4. As to payment of money out of Court see post, pp. 201, 202. See also generally on the subject of Proceedings in the Chancery Pay Office, Haynes' Ch. Pr. pp. 562-584.

(*y*) Order xxii. r. 17.

(*z*) Order L. r. 8.

(*a*) Daniel's Ch. Pr. p. 1548.

Important
limitation of
extent of writ
of *ne exeat*
regno.

an equitable nature—*e.g.*, to prevent a trustee from going abroad. To take this instance, if a *cestui que trust* had reason to believe that his trustee, who had not accounted to him, was going abroad without accounting, he might issue a writ against him for an account, and then immediately apply to the Court *ex parte*, by motion, for this writ, which would be granted on due cause shewn by affidavits (b). It has, however, been held (c) that since the Judicature Acts, 1873 and 1875, the practice at Common Law and in Equity in respect of the arrest of a debtor on mesne process is assimilated, and that a writ of *ne exeat regno* in respect of an equitable debt will not be granted unless the applicant brings his case within the terms of the sixth section of the Debtors Act, 1869, a subject which has been already dealt with (d).

Stop order.

In the course of an action in this Division money is frequently paid into Court to be dealt with by the Court in the action, and when persons have successive interests in it—*e.g.*, if the income of the fund is given to one for life, and then the *corpus* to some other person or persons—it usually remains in Court until the happening of this ultimate event. In such cases it often happens that a beneficiary charges or disposes of his interest to some person, and, if so, to perfect the charge or disposition in his favour, he should obtain a stop order. This is an order preventing any fund in Court being paid out or otherwise dealt with without notice to the applicant. If the party against whose interest the stop order is desired consents, the application for it may be by summons in Chambers, but if not it must be by petition to the Court. The application must be supported by evidence shewing the interest of the party against whom a stop order is sought, in the fund in Court, and verifying the security or interest that has been acquired by the applicant. The summons

(b) Daniel's Ch. Pr. pp. 1548–1562.

(c) *Drover v. Beyer*, 49 L. J. (Ch.) 37.

(d) *Ante*, pp. 102, 103.

or petition, as the case may be, need not be served upon all parties to the cause or matter, but only on the persons whose interests are affected. The applicant for any such order is liable at the discretion of the Court or a Judge to pay any costs, charges or expenses which, by reason of the obtaining of any such order, shall be occasioned to any party to the cause or matter, or any persons interested in the fund (*e*).

If a plaintiff does not proceed with due diligence in prosecuting the accounts and inquiries in Chambers, or generally in bringing the action to a conclusion, the Court or Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings, or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid any party, or the official solicitor of the Court, may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the official solicitor are to be paid by such parties, or out of such funds as the Court or Judge shall direct; and if any such costs be not otherwise paid, the same are to be paid out of such moneys (if any) as may be provided by Parliament (*f*). An application with regard to delay usually takes the form of a summons by some party that the conduct of the cause may be given to him (*g*).

For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the proper steps for preventing improper delay in the progress thereof, the proper officer must at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of

Delay in
prosecuting
accounts and
inquiries.

Search to
ascertain state
of proceedings.

(*e*) Order XLVI. rr. 12, 13; Daniel's Ch. Pr. pp. 223-224. As to a Distringas see post, pp. 223, 224. As to a Charging Order see ante, pp. 137, 138.

(*f*) Order XXXIII. r. 9.

(*g*) Daniel's Ch. Pr. pp. 1082-1084

the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Central Office (*h*).

Course to be taken when two actions commenced for administration of any estate, and judgment first obtained in second action.

If an action is instituted for the administration of an estate, and the writ served upon the defendant, the personal representative, and subsequently a like action is commenced by another person interested in the estate, it is evident that the defendant can by delaying the first plaintiff and assisting the second one, enable the latter to obtain judgment first. In such a case the proper course is for the plaintiff in the first action on discovering the judgment in the second action, to take out a summons entitled in the two actions, asking that he may have liberty to attend proceedings under the judgment in the second action, that he may have the conduct of such proceedings given to him, and that the costs of his action may be costs in the second action. And such an order will usually be made (*i*).

Application for leave for ward of Court to marry.

If any person who is a ward of Court is desirous of contracting marriage, an application for leave to marry must be made. The application is made by petition, stating (1) the age of the ward; (2) the nature and amount of his or her fortune; and (3) the contemplated marriage, and the age, rank, position, and fortune of the person to whom the infant is proposed to be married, and praying for an inquiry whether the marriage is a proper one. The order made on the petition refers the matter to Chambers, where—the Chief Clerk being first satisfied of the fitness of the match—the settlements are considered, settled, and approved, and an order is ultimately made that on the execution of the settlements the parties be at liberty to marry (*k*).

(*h*) Order Lxi. r. 24.

(*i*) *Rhodes v. Barrett, Ex parte Singleton*, L. R. 12 Eq. 479. Should it happen that the actions are assigned to different Judges, before taking out the summons the plaintiff in the first action must get it transferred to the Judge to whom the other action is assigned.

(*k*) Daniel's Ch. Pr. pp. 1206–1214. As to an application under 18 & 19 Vict. c. 43, see post, pp. 221, 222.

In some cases a direction is given by the Court for something to be done or carried out in Chambers, and for such matters it is not always necessary to draw up an order, but a note of the direction may be obtained from the Registrar, and the matter proceeded with upon that (*l*); thus, a direction may be given by the Court for the settlement of a deed in Chambers in case the parties differ as to it. In this particular case there is a special regulation as to the mode of procedure which it would be well to notice, and it is as follows :—

Direction for matters to be done in Chambers;

A summons to proceed is issued, and upon the return thereof the party entitled to prepare the draft deed is directed to deliver a copy thereof, within such time as the Judge shall think fit, to the party entitled to object thereto, and the party so entitled to object is directed to deliver to the other party a statement in writing of his objection (if any), within eight days after the delivery of such copy, and the proceedings are then adjourned until after the expiration of such period of eight days (*m*).

as, for instance, settling deed if parties differ.

Where any real or personal estate forms the subject of any proceedings in the Chancery Division, and the Judge is satisfied that the same will be more than sufficient to answer all the claims therein which ought to be provided for in such proceedings, the Judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate, or a part of the personal estate, or the whole or part of the income thereof up to such time as the Judge shall direct (*n*). Under this provision an order for maintenance will be able in many cases to be obtained at a very early stage of the proceedings, instead of waiting, as was formerly necessary, till the matter had been before the Chief Clerk, and he had certified that there was a clear balance applicable to that purpose.

Application for payment of income of real or personal estate, or part of corpus of personal estate.

(*l*) Order L.V. r. 29.

(*m*) Ibid. r. 34.

(*n*) Order L. r. 9.

CHAPTER IV.

PROCEEDINGS TO CONCLUSION.

IN Chapter II. of this Part the proceedings in Chambers under the judgment were considered to their conclusion, that conclusion being the Chief Clerk's certificate (*o*). We have now to deal with the proceedings subsequent to this to their close.

Further consideration always reserved.

Every judgment directing accounts and inquiries to be taken and made always reserves the further consideration of the action; for it is evident that after the accounts and inquiries have been proceeded upon before the Chief Clerk in Chambers, and he has made his certificate, the cause must again come before the Court to be finally disposed of, for the Chief Clerk's certificate only certifies a number of facts, and it is for the Court subsequently to act on these facts as found by the Chief Clerk. This being so, it is manifestly of great importance that the Chief Clerk should have accurately certified the facts; and that this should be so to the fullest extent, there exists the power of taking the opinion of the Judge on any point as it arises, or of applying to vary it, as has been already mentioned (*p*).

Cause set down on further consideration.

The step to bring the action to a conclusion, is to set it down for final hearing, or, as it is called, for hearing on further consideration. The action cannot be thus set down until the expiration of eight days from the filing of the Chief Clerk's certificate, unless this time is waived by the other side. If it is not set down

(*o*) Ante, pp. 179, 180.

(*p*) Ibid.

by the plaintiff or party having the conduct of the proceedings within fourteen days from the filing of the Chief Clerk's certificate, it may be set down by any other party. The mode of setting it down is to hand into the Registrar's clerk a written request signed by the solicitor setting it down, asking that it may be set down, and to produce to him the judgment or order which adjourned the further consideration, or an office copy thereof, and an office copy of the Chief Clerk's certificate, or a memorandum of the date when the certificate was filed, indorsed on the request by the proper officer. The cause is then set down, but is not allowed to be put in the paper for hearing until after the expiration of ten days from the day on which it was set down; and notice of its having been set down must be given to the other parties at least six days before the day for which the same is marked for hearing (*q*). The practice is in general the same as on the original hearing (*r*), but no further evidence than the certificate as to matters directly in issue in the cause will be received, but the Court will draw conclusions from statements in the certificate. Any matters not directly in issue may, if the Court thinks proper, be proved by affidavit (*s*). The party who has set the cause down must leave in Court with the Judge's secretary for the use of the Judge, a copy of the judgment or order which adjourned the further consideration, and also of the Chief Clerk's certificate: and if minutes of the proposed order on further consideration have been prepared, two copies thereof should be left.

An action may be heard on further consideration as a short cause under the same circumstances and in the same manner as has already been pointed out with regard to the original hearing (*t*), and no consent of the other parties is necessary to its being marked "short." The judgment also, when pronounced,

Hearing in further consideration as a short cause.

Drawing up, &c., of judgment.

(*q*) Order xxxvi. r. 21.

(*r*) Ante, pp. 162, 163.

(*s*) Daniel's Ch. Fr. pp. 1228, 1229.

(*t*) Ante, pp. 169, 170.

is drawn up, settled, and passed and entered, in a similar manner (*u*).

Further
consideration
in Chambers.

In certain cases the further consideration may be heard in Chambers—viz., where the order to be made is for the distribution of an insolvent estate, or for the distribution of the estate of an intestate, or for the distribution of a fund amongst creditors or debenture-holders (*x*).

Judgment on
further con-
sideration.

The Court will, when possible, give a final judgment on this hearing on further consideration, declaring the rights of the parties, dealing with the whole property the subject of the action, and directing the taxation and payment of costs. In some cases, however, to at once finally dispose of the whole action is impossible, for there may be further matters necessary to be inquired into, and when this is so the action will be disposed of only as far as it can be up to that time; any further accounts and inquiries that appear necessary or advisable will be directed, and as to them the cause will stand in the same position as originally; that is to say, these further accounts and inquiries will have to be proceeded with in Chambers, a further Chief Clerk's certificate obtained, and there will be then another hearing on further consideration.

When cause
cannot be
finally dis-
posed of.

Parties and
property re-
maining under
control of the
Court.

And even although the action may not require any further accounts and inquiries, or any further actual hearing, yet in many cases it is necessary that the Court should retain control over persons and property—*e.g.*, where there are infants, wards of Court, or where there is a fund in Court on which the dividends have to be paid to certain persons, and ultimately the *corpus* to others. In all such cases as this, the judgment on further consideration reserves liberty to apply, so that on any point that may be necessary the parties may from time to time apply to the Court in the existing action.

(*u*) Ante, p. 168.

(*x*) Order LV. r. 2 (16).

The next thing to observe on is the enforcement and carrying out of the judgment. The order on further consideration in some cases may direct money to be paid by one of the parties, and the different modes of enforcing such a judgment as this have already been pointed out (y); in other cases it may direct some act to be done by one of the parties other than payment of money, and here again the modes of proceeding have been pointed out (z), but the process of attachment for contempt of Court is, however, of more constant occurrence in this than in the Queen's Bench Division.

An application for an attachment is made to the Court by motion, of which notice has been duly served, and if such motion is founded on evidence by affidavit—as is always the case—a copy of any affidavit intended to be used must be served with the notice of motion (a). Personal service of such notice is not necessary; it is sufficient if served in the way ordinary notices and proceedings in an action are served (b). In support of the motion it must be shewn that the judgment or order directing the doing or not doing of the act in respect of which the attachment is sought, was served upon the person, or in some way brought to his knowledge, and that there has been a breach of it. Upon this contempt being shewn the party will, unless he can shew some good excuse, be committed to prison. How long he remains there is a matter of discretion with the Court, but he is usually allowed to clear his contempt by doing, or undertaking to do, or not to do, the act in question, as the case may be, and paying the costs incurred by his disobedience. This is called purging or clearing his contempt.

In some cases there may be money in Court which is dealt with by the judgment or order on further consideration. In such a case, if in cash it may simply be directed

Enforcement
and carrying
out of
judgment.

Attachment
for contempt
of Court.

Dealing with
money in
Court.

(y) Ante, pp. 133–138.

(z) Ante, pp. 138, 139.

(a) Order LI. r. 4.

(b) *Browning v. Sabin*, 5 Ch. Div. 511; 46 L. J. Ch. 728. *In re a Solicitor*, 13 Ch. D. 152; 49 L. J. Ch. 295.

Identification
on receiving
money out of
Court.

to be paid to the party or parties entitled, or if invested in stock the stock may be directed to be transferred to such party or parties, or it may be directed to be sold, and the proceeds of such sale so paid. When cash in Court is directed to be paid out, a cheque is obtained by simply leaving the judgment or order at the office of the Paymaster-General and bespeaking it, and it will be usually ready after the lapse of two or three days. The party to receive the money then attends with his solicitor (who must previously have been identified at the Chancery Pay Office), who identifies him as the person named in the judgment or order, and he receives his cheque. Where stock is to be transferred or sold, directions to this effect are bespoken at the Registrar's Office in the first instance, which is done by simply leaving the judgment or order there. The directions when obtained are taken, together with such judgment or order, to the Paymaster-General's Office, and the transfer or sale is effected, and in this latter case a cheque obtained as above detailed (*c*).

Costs.

We have said that the judgment or order on further consideration usually deals with the question of costs. Sometimes by it the costs are directed to be paid by one of the parties, but in a very great number of cases they are ordered to be paid out of some fund in Court. The general subject of costs has already been considered (*d*), and it is not therefore necessary to add much here, but the student should be reminded that as there is not usually any issue tried by a jury in this Division, it is generally necessary for the Court to give a direction as to costs, and costs are in the discretion of the Court (*e*).

Procedure
where costs
ordered to be
taxed, in case
the parties
differ.

Sometimes an order directs costs to be paid by one party to another, the same to be taxed in case the parties differ. When the order is to this effect, the proper

(*c*) See generally as to proceedings in the Chancery Pay Office, Haynes' Ch. Pr. pp. 562-584, also ante, pp. 192, 193.

(*d*) Ante, Part II. Chap. V. pp. 27, 28, 143-149.

(*e*) Order xxv. r. 1, ante, p. 143.

course is for the party claiming the costs to bring his bill into the Taxing Office and give notice thereof to the other party, and at any time within eight days after such notice such other party has liberty to inspect the same without payment of any fee. At any time before the expiration of the eight days, or such further time as the Taxing Master shall in his discretion allow, such other party must either agree to pay the costs or signify his dissent therefrom, and is thereupon at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming such costs refuses to accept the sum so tendered, the taxing officer proceeds to tax the costs, and where the taxed costs do not exceed the sum tendered the costs of the taxation are borne by the party claiming the costs (*f*).

The proceedings to tax costs in this Division are of *Taxation.* a more formal and lengthy character than in the Queen's Bench Division (*g*), on account of the different class of cases involved—a reason which indeed accounts for nearly all differences in practice in the two Divisions—for, as a Chancery action generally necessarily lasts much longer than one in the Queen's Bench Division, and naturally the bills of costs therefore are usually much heavier, it is unfortunately impossible that they can be disposed of in the same summary way as they can be there.

The proceedings to taxation in the Chancery Division are as follows :—The plaintiff's solicitor certifies on the original judgment or order directing taxation, that it has not already been referred to any Taxing Master, and leaves it with one of the Taxing Masters, who is called the Sitting Master of the day. He refers it to one of the Taxing Masters for taxation in proper rotation (*h*), and in any future taxation of costs in the same

Proceedings on
taxation.

(*f*) Order LXV. r. 27 (34). -

(*g*) As to which see ante, pp. 146, 147.

(*h*) Order LXV. r. 18.

action no fresh reference is necessary, but it will take place before the same Master. The solicitor then leaves a copy of the judgment or order with the Taxing Master to whom the taxation has been referred, and informs the different solicitors who he is. The solicitors then prepare and leave their costs, with all necessary vouchers, and on leaving them a memorandum of their being left, called a warrant on leaving, is issued and served on the other solicitors. All the bills to be taxed being left, the plaintiff's solicitor procures an appointment and issues a warrant to tax, being a memorandum containing a note of the appointment, and this is served on the other solicitors. The appointment is then attended, and the bills being taxed and completed, the Master gives his certificate of taxation, in which he certifies what is the amount of each party's costs. If these costs are ordered to be paid out of a fund in Court, the judgment and an office copy of the certificate of taxation are taken to the Paymaster-General's Office, and the cheques bespoken and received in the ordinary way. If any party entitled to costs neglects to bring in his bill for taxation or to procure the same to be taxed, the Taxing Master may certify the costs of the other parties and certify such neglect, or may allow such party so neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by his conduct (i).

Warrant on leaving.

Warrant to tax.

Certificate of taxation.

Reviewing taxation.

If any party is dissatisfied with the taxation of the costs in either the Chancery or the Queen's Bench Division, he is entitled to bring the point before the Court or a Judge. The course to obtain this review of the taxation is to deliver to the other party interested therein, and carry in before the Taxing Master, objections in writing to the taxation, before the Master signs his certificate or allocatur, specifying therein by a list in a short and concise form, the items or parts

(i) Order LXV. r. 27 (28).

objected to, and the grounds and reasons for such objections, and he may thereupon require the Taxing Master to review the taxation in respect thereof (*k*). The Taxing Master must then reconsider the matter and may receive further evidence if he thinks fit, and must in his certificate or allocatur give his reasons or grounds of decision and any special facts or circumstances relating thereto (*l*). If the party is still dissatisfied he may within fourteen days from the date of the certificate or allocatur, or such other time as the Court or Judge or Taxing Officer at the time he signs the certificate or allocatur may allow, take out a summons to review the taxation (*m*), and the matter then comes before the Judge in Chambers, who may deal with it there or adjourn it into Court. Such application is heard and determined by the Judge upon the evidence that was before the Taxing Master, and no further evidence is received at the hearing of the summons unless the Judge otherwise directs (*n*).

It should be noticed that the County Courts have a ^{County Courts} general jurisdiction in matters of an equitable character, where the matter in dispute does not exceed £500 in value. They have, however, no jurisdiction to entertain an action for an injunction, though they may grant an injunction as incidental to other matters in which they have jurisdiction (*o*). There is no absolute rule that because the matter in dispute does not exceed £500 proceedings should be brought in the County Court.

(*k*) Order LXV. r. 27 (39).

(*l*) Ibid. (40).

(*m*) Ibid. (41).

(*n*) Ibid. (42). Generally on the subject of Costs and Taxation of Costs see Order LXV., and ante, pp. 27, 28, 143-149.

(*o*) 28 & 29 Vict. c. 99; 30 & 31 Vict. c. 142, s. 9; 31 & 32 Vict. c. 40, s. 12. As to their jurisdiction in matters coming within the Queen's Bench Division see ante, pp. 143, 144.

CHAPTER V.

ON CERTAIN SPECIAL PROCEEDINGS.

It has been stated (*p*) that in some cases proceedings may be commenced by petition, motion, summons and special case (*q*). These require to be noticed, as also do one or two other special proceedings.

Petitions.

A petition, when dealing with it as an interlocutory proceeding, we defined as a written application to the Court containing a statement of facts and praying for a certain order (*r*). The same definition is equally applicable to a petition as a means of commencing proceedings, except that here it is specially allowed by the provisions of some statute.

A petition under the statutory jurisdiction of the Court is intitled or headed in the matter of the Act of Parliament under which the petition is presented, and also in the matter of the particular trust, or property, or person to which it relates, and should state the facts concisely, and be divided into paragraphs numbered consecutively (*s*). As has already been stated with regard to interlocutory petitions (*t*), the petition is lodged at the Registrar's Office, and in addition an originating petition has to be marked with the name of one of the Judges, to be ascertained in the same way as in the case of an action commenced in the

(*p*) Ante, p. 160.

(*q*) The originating of proceedings by Special Case under 13 & 14 Vict. c. 35, is revived by Order xxxiv. r. 8.

(*r*) Ante, p. 183.

(*s*) Order LII. r. 18. Daniel's Ch. Fr. 1452.

(*t*) Ante, p. 183.

Chancery Division (*u*). Every petition states at its foot the names of the persons on whom it is proposed to serve it, and they are called the respondents, and if no person is intended to be served a statement to that effect is made at the foot thereof (*x*). The petition being presented it is answered as before explained in the case of interlocutory petitions (*y*). The petition is not usually signed by counsel. If any parties to it are under disability, the same rules apply as in the case of parties to an action being under disability.

Service of the petition is effected by delivering to the person to be served a true copy of the petition with the foot-note and the fiat (*z*) thereon, and at the same time shewing him the original (*a*). The rules generally as to service of a writ in an ordinary action (*b*) apply to service of a petition. At least two clear days must elapse between the service of the petition and the day appointed for its hearing (*c*); and generally the same rules apply as to the hearing and subsequent drawing up and perfecting of the order as have already been mentioned in considering interlocutory petitions (*d*).

We will now proceed to notice some particular instances of proceedings commenced by petition under the Statutory Jurisdiction of the Court:

1. *Petitions under the Legacy Duty Act* (*e*).—Where any person who is an infant or beyond seas is entitled to any legacy or the residue of any personal estate chargeable with legacy duty, the executor or administrator may, after deducting the duty, pay or transfer the same into Court to the account of the person or

(*u*) Order v. r. 9; see ante, p. 160, as to the mode of ascertainment of the particular Judge.

(*x*) Order LII. r. 16.

(*y*) Ante, p. 183.

(*z*) That is the "answering" of the petition—viz., the date of hearing, &c.

(*a*) Daniel's Ch. Pr. p. 1455.

(*b*) Ante, pp. 48–53.

(*c*) Order LII. r. 17.

(*d*) Ante, p. 186; see also p. 184, as to Costs on Petitions.

(*e*) 36 Geo. 3, c. 52.

persons for whose benefit the same is so paid or transferred. The money paid in is invested and the dividends accumulated. The person or persons entitled may obtain payment out of Court by an *ex parte* petition, or *ex parte* motion, in a summary way on proper proof of identity; and if paid in on account of infancy, on proof also of having attained full age. The payment into Court under this Act of a legacy belonging to an infant does not constitute the infant a ward of Court (*f*).

When application by summons.

If the sum paid or transferred into Court does not exceed £1,000 cash or £1,000 nominal value of stock, the application for payment out is made by *ex parte* summons at Chambers (*g*).

Petitions under Lands Clauses Consolidation Act, 1845.

2. *Petitions under the Lands Clauses Consolidation Act, 1845 (h).*—Prior to this Act every company authorized by Act of Parliament to acquire lands for undertakings or works of a public nature included in its special Act the powers and provisions which were necessary to enable the company to take such lands; but by this Act the usual provisions were consolidated therein, and were made applicable to all future undertakings authorized by statute, except so far as they might be varied or excepted by the special Act (*i*).

The special particular in which we require to notice this Act is in the case of land being taken, in which persons who are under some disability are interested. In such cases the value of the property is arrived at by two surveyors, one nominated by the promoters of the undertaking and the other by the other party, and if they differ, by a third surveyor appointed by two justices on the application of either party after notice to the other.

(*f*) Daniel's Ch. Pr. pp. 1911–1914.

(*g*) Order LV. r. 2 (4).

(*h*) 8 & 9 Vict. c. 18. amended by 23 & 24 Vict. c. 106.

(*i*) Daniel's Ch. Pr. p. 1861.

The amount of the purchase-money being thus as-
 Dealing with
 certain, it is paid into the Bank with the privity of money.
 the Paymaster-General of the Court, and placed to a
 proper account there, and invested in Consols until it
 can be applied to one of the following purposes—viz. :
 (1) the purchase or redemption of the land tax, or dis-
 charge of any debt or incumbrance affecting the land in
 respect of which the money has been paid, or affecting
 other land settled to the same uses or trusts ; (2) in
 the purchase of other lands to be settled to the same
 uses or trusts ; (3) if the money is in respect of any
 buildings, in removing or replacing such buildings, or
 substituting others in their stead ; or (4) in payment
 to any person becoming absolutely entitled.

Applications under this Act are frequent, for—the
 money being simply paid into Court as above mentioned,
 —at first, perhaps, a temporary investment may be re-
 quired, then a permanent investment, and finally pay-
 ment out of Court to the person absolutely entitled. To
 accomplish each of these objects different applications
 have to be presented, and the costs of the same, if
 proper under the circumstances, fall upon the company.
 All applications for interim and permanent investments,
 and for payment of dividends, are now to be disposed
 of by summons in Chambers (*k*). It should be men-
 tioned that if the purchase-money does not amount to
 £200, instead of being paid into Court as just mentioned,
 it may be paid to two trustees to be nominated on behalf
 of the persons entitled, in the manner pointed out by
 the Act, and if the money does not exceed £20 it may
 instead be paid to the husband, guardian, committee, or
 trustee of the person entitled to the rents and profits
 of the lands taken.

Instances of
 petitions under
 this Act.

Summons in
 certain cases.

Course where
 purchase-
 money under
 £200 and £20
 respectively.

In the case of applications under this or any other
 Act of Parliament directing the purchase-money of any
 property sold to be paid into Court, any persons claiming

Affidavit
 in support of
 such petition.

(*k*) Order LV. r. 2 (7).

to be entitled to the money so paid in, must make an affidavit, not only verifying their title, but also stating that they are not aware of any right of any other person, or of any claim made by any other person, to the sum claimed, or any part thereof; or if the applicants are aware of any other right or claim, they must in such affidavit state or refer to and except the same (*l*).

Trustee Relief
Acts, 1847 and
1849.

3. *Petitions under the Trustee Relief Acts, 1847 and 1849 (m).*—The object of these Acts is to afford to persons standing in the position of trustees a means, in the event of disputes arising as to who is entitled to trust funds held by them, of determining the point without running the risk they would necessarily do in paying the money over simply on their own judgment.

Payment into
Court.

The course to be taken under these Acts is for the trustee seeking relief to file an affidavit (which having to be acted on the Chancery Pay Office requires to be printed), giving his name and address, and an address for service, particulars of the trust funds, a short description of the trust, the names and descriptions of all persons interested to the best of his knowledge, and submitting to the jurisdiction of the Court. If it is deemed unnecessary to have the money invested in the meantime, the affidavit should also contain a statement to that effect, otherwise, on payment into Court, it will be invested. On production of an office copy of this affidavit, the money or stock may be paid or transferred into Court without any order for that purpose. If there are several trustees, the payment or transfer in may be made by the majority of them, and if any difficulty arises through their disagreement on the point of payment or transfer into Court, the Court may order it to be done on the petition of the major part of the trustees. Any person who becomes by force of circumstances a trustee, is a trustee within the meaning of these Acts, and may

(*l*) Order LII. r. 18.

(*m*) 10 & 11 Vict. c. 96; 12 & 13 Vict. c. 7.

take advantage of their provisions—*e.g.*, a mortgagee who has sold under his power of sale, and has a balance in his hands after payment of his principal, interest, and costs.

An extension of the circumstances under which the provisions of the Trustee Relief Acts may be taken advantage of is made by sect. 25, sub-sect. 6, of the Judicature Act, 1873 (n). The sub-section referred to is that which provides that an absolute assignee of a *chose in action*, after giving notice of his assignment to the holder of the *choses*, may sue in his own name, and it concludes as follows:—"Provided always that if the debtor, trustee, or other person liable in respect of such debt or *chose in action* shall have had notice that such assignment is disputed by the assignor, or any one claiming under him, or of any other opposing or conflicting claims to such debt or *chose in action*, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same; or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees."

Sect. 25 (6)
of Judicature
Act, 1873.

The payment or transfer into Court having been made, notice is given by the trustee to the different persons mentioned in his affidavit. One or more of these persons then presents a petition setting forth the facts of the case, and giving an address for service, asking for the fund to be dealt with and disposed of as he contends it should be; this petition is served on the trustee and all persons interested, and supported by affidavit, and in due course comes on to be heard, when the matter is disposed of.

Notice of
payment or
transfer into
Court.
Petition.

In cases in which the fund in Court, either in cash or nominal value of the stock, does not exceed £1,000, the application is now to be by summons in Chambers (o).

When
application by
summons.

(n) 36 & 37 Vict. c. 66.

(o) Order L.V. r. 2 (5).

Costs of
trustee of
payment in.

It is usual for a trustee paying money into Court under these Acts to deduct therefrom, in the first instance, the costs of his so doing. He need not do so, however, and if he does not the Court will order payment of his costs, provided of course it is a reasonably proper case for payment into Court. If he has improperly taken advantage of the Act when he ought not to have done so, the Court can order him to pay the costs occasioned thereby (*p*).

Trustee Acts,
1850 and
1852.

4. *Petitions under the Trustee Acts, 1850 and 1852* (*q*).

Vesting order.

Under these Acts, when necessary (*r*), a petition may be presented for the appointment of new trustees, and for the vesting of any property in them, or simply for an order vesting any property in any person, called a vesting order. Any petition for the appointment of new trustees must be supported by evidence shewing the willingness of the intended new trustee to act, and of his fitness. The former point is proved by the verification of his written consent, and the latter point by the affidavit of some person acquainted with him. The affidavit of fitness must not be made by the solicitor of any of the parties. In addition to this, the nature of the trust, the persons interested in it, and the reasons of the application, have to be shewn by affidavit (*s*). Any order made under these Acts dealing with a legal estate is liable to the same stamp duty as would have been payable if the same matter had been effected by deed.

Stamp duty on
order under
these Acts.

When applica-
tion to be by
summons.

All applications under these Acts are now to be by summons in all cases where a judgment or order has been given or made for the sale, conveyance or transfer of any property (*t*).

(*p*) See hereon Daniel's Ch. Pr. pp. 1784-1797.

(*q*) 13 & 14 Vict. c. 60, and 15 & 16 Vict. c. 55, which are to be construed as one Act.

(*r*) Which is comparatively rarely now, on account of the full provisions for appointment of new trustees in the Conveyancing Act, 1881 (44 & 45 Vict. c. 41, s. 31).

(*s*) Daniel's Ch. Pr. pp. 1798-1832.

(*t*) Order LV., rule 2 (8).

5. *Petitions for the Opinion of the Court under Lord St. Leonard's Act (u).*—Under the provisions contained in this Act any trustee, executor, or administrator may apply for the opinion, advice, or direction of the Court on any question touching the management or administration of the trust property or the assets of the testator or intestate. The petition is served on all persons interested seven clear days before the hearing thereof (*v*), and if the trustee, executor, or administrator acts upon the opinion, advice, or direction given, that exonerates him from further responsibility, unless he has been guilty of any fraud, wilful concealment, or misrepresentation in obtaining such opinion, advice, or direction. The opinion, advice, or direction of the Judge is passed and entered, and remains on record in the same manner as any order made by the Court or a Judge, and the same is termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be (*x*).

Petitions for
opinion of
Court.

Questions of construction cannot be decided by a petition under this provision: it is confined to matters of administration (*y*). A petition under this Act requires to be signed by counsel, which is not the case with ordinary petitions. The application, instead of being by petition, may be by summons in Chambers founded on a written statement of facts, which statement must be signed by counsel.

Scope of such
petitions.

6. *Petitions under the Leases and Sales of Settled Estates Act, 1877 (z).*—Petitions may, under this Act, be presented for the purpose of getting a lease or sale of a settled estate which could not otherwise be leased or sold on account of its being in settlement. The student is referred to the Act itself, which will now be rarely

Petitions under
Leases and
Sales of Settled
Estates Act,
1877.

(*u*) 22 & 23 Vict. c. 35, s. 30, amended by 23 & 24 Vict. c. 38, s. 9.

(*v*) Order LII. r. 21.

(*x*) Ibid. r. 22.

(*y*) Daniel's Ch. Pr. p. 1943.

(*z*) 40 & 41 Vict. c. 18.

used on account of the provisions of the Settled Land Act, 1882 (a).

Winding-up of companies.

Grounds for petition.

7. *Petitions to wind up Companies under the Companies Acts, 1862 and 1867 (b).*—There are various grounds for presenting petitions praying that a company may be ordered to be wound up—viz.: (1.) That the company has specially resolved to wind up under the jurisdiction of the Court; (2.) That it has not begun, or has suspended business for a year; (3.) That its members are reduced to less than seven; (4.) That it is unable to pay its debts; and (5.) It may be ordered to be wound up if it can be shewn to the Court that it is just and equitable that it should be wound up (c). The petition to wind up must be verified by affidavit and be advertised seven clear days before the hearing, once in the *London Gazette*, and if the company's registered office is within ten miles of Lincoln's Inn Hall, once in the London daily morning newspapers, or if not within this distance, then once in two local newspapers of the district. At the hearing of the petition, the necessary facts being proved, and no satisfactory cause shewn to the contrary, the order to wind up is made. Any creditors or shareholders are entitled to appear on the hearing of the petition, and if the order to wind up is made, and they have supported the winding-up, they get their costs out of the company's assets; if the order is refused, then those creditors or shareholders who have opposed the winding-up of the company get their costs against the person or persons presenting the petition. Every separate shareholder or creditor who appears does not get a separate set of costs, but one set of costs only is allowed for shareholders, and one set of costs for creditors.

Proceedings in Chambers after order to wind up.

The order to wind up having been made and duly drawn up, passed, and entered, it is carried into Cham-

(a) 45 & 46 Vict. c. 38. See as to applications under that Act by summons, post, pp. 222, 223.

(b) 25 & 26 Vict. c. 89, and 30 & 31 Vict. c. 131.

(c) 25 & 26 Vict. c. 89, s. 79; 30 & 31 Vict. c. 131, ss. 40, 41.

bers and an official liquidator is appointed by the Chief Clerk. His duties are to get in the company's assets, and generally to act in bringing the administration thereof to a close (*d*). With regard to unpaid calls, he brings into Chambers two lists of persons who are liable thereon, who are called contributories. These lists were styled respectively the A. list and the B. list; the A. list containing the names of those shareholders who were members of the company at the date of the order to wind up, and the B. list containing the names of those who were not then members, but who had not ceased to be members for one year prior to the date of the winding-up order, and to these latter recourse can be had if, after exhausting the liability of the former, there are still debts or liabilities of the company undischarged. The shareholders in the B. list are not, however, liable for debts of the company contracted after they ceased to be members (*e*). The accounts of liquidators are passed and verified in the same manner as receivers' accounts (*f*).

The definition already given of a motion, when *Motions.* treating of it as an interlocutory proceeding—viz., an application made to the Court without any written statement (*g*)—is equally applicable to a motion as a means of commencing proceedings. However, such a motion is not of constant occurrence; an instance of it would occur in the enforcing of an agreement for the remuneration of a solicitor under the Solicitors' Remuneration Act, 1870 (*h*), and also in an application under the Legacy Duty Act (*i*). Another instance would be an application that a solicitor should answer matters on affidavit, or that he should be struck off the Rolls. With regard to such motions as these against

d) See his powers detailed in 25 & 26 Vict. c. 89, s. 95.

e) 25 & 26 Vict. c. 89, s. 38.

f) Order L. r. 23; ante, p. 189.

g) See ante, p. 184.

h) 33 & 34 Vict. c. 28, s. 8.

i) See ante, p. 208.

solicitors, the notice of motion must state in general terms the grounds of the application; a copy of any affidavit intended to be used must be served with the notice of motion (*j*); and the notice of motion must be served not less than ten clear days before the time fixed by the notice for making the application (*k*).

Assigning to
particular
Judge.

Where the commencement of any proceeding is by motion, the notice of motion must be taken to the writ department of the Central Office, and it is the duty of the proper officer there to mark the same with the name of one of the Judges, to be ascertained in the same way as in the case of an action commenced in the Chancery Division (*l*).

Summonses.

A summons we have previously defined as a written application made in a Judge's Chambers (*m*), which definition is equally applicable to a summons as a mode of commencing proceedings. Summonses originating proceedings are sealed in the Central Office, and a duplicate thereof filed there, the day and hour for attendance being left to be added afterwards in the margin or at the foot thereof, and being inserted in the Chambers of the Judge to whom the matter is assigned, who is ascertained in the same way as in the case of an action commenced in the Chancery Division (*n*). The service must be made seven days before the return day of the summons, and if this is not done an indorsement may be made upon the summons, and on the copy for service, containing a fresh appointment, and duly sealed, and the indorsement and summons are served together. The parties served must enter appearances in the Central Office, and give notice thereof before they can be heard on the summons (*o*).

(*j*) Order LII. r. 4.

(*k*) Ibid. r. 5.

(*l*) Order v. r. 29; see ante, p. 160, as to the mode of ascertainment of the particular Judge.

(*m*) Ante, p. 185.

(*n*) Order v. r. 9; ante, p. 160.

(*o*) Order LV. rr. 20-24.

We have already noticed several matters which, ^{Instances of} ordinarily commenced by petition, may under certain ^{proceedings} circumstances be commenced by summons, and will ^{commenced by} summons. ^{summons.} now in addition mention several others.

1. *Summonses for the Administration of the Estates of Deceased Persons (p).*—An originating summons for this ^{Administration} purpose may be issued by any person claiming to be ^{summons.} interested either as creditor, legatee, or next of kin, against the executor or administrator, for the administration of the personal estate of the deceased, or of any real estate devised to trustees in trust to sell. The summons is intituled in the matter of the deceased person, and between the applicant as plaintiff and the executor or administrator as defendant. The hearing takes place in Chambers, and on account of this the proceedings are usually less expensive and more expeditious than a regular action for the purpose. This mode of proceeding can only be had recourse to in simple cases, and provided there is no special or peculiar relief sought; thus, an executor or administrator cannot be charged with wilful default on such a summons (q).

If an action for administration is brought after an ^{Stay of} order has been made upon an administration summons, ^{action for} the action will be stayed unless further relief can be ^{administration} obtained in the action than upon the summons. ^{after order} The practice to be observed as to service of notice of the ^{made on} order, and obtaining leave to attend the proceedings, ^{summons.} and generally except as above mentioned, is the same ^{General} as in an ordinary action (r). ^{proceedings.}

To a certain extent the procedure by means of this summons must in the future be considered obsolete, on account of the summons now allowed under the Rules of 1883, and which is next dealt with.

(p) 15 & 16 Vict. c. 86, s. 45.

(q) Daniel's Ch. Pr. pp. 1071-1076.

(r) Haynes' Ch. Pr. pp. 413, 414.

Originating
summonses
under Rules
of 1883.

For limited
purposes.

2. *Originating Summonses relating to Administration and other matters, under the Rules of 1883 (s).*—It is now provided by the Rules of 1883, that the executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law or customary heir of a deceased person, or as cestui que trust under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the Chambers of a Judge of the Chancery Division, for such relief of the nature or kind following, as may by the summons be specified, and as the circumstances of the case may require (that is to say), the determination, *without an administration of the estate or trust*, of any of the following questions or matters :—

- (a.) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or cestui que trust :
- (b.) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others :
- (c.) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :
- (d.) The payment into Court of any money in the hands of the executors or administrators or trustees :
- (e.) Directing the executors or administrators or trustees to do or abstain from doing any

particular act in their character as such executors or administrators or trustees :

- (f.) The approval of any sale, purchase, compromise, or other transaction :
- (g.) The determination of any question arising in the administration of the estate or trust (t).

It will be noticed that the great importance of the foregoing provision is in enabling certain things to be done without a general administration. To have had the assistance of the Court in any of the foregoing matters would formerly have necessitated a suit for the general administration of the estate, or for the general carrying out the trusts of the settlement or will. Effect of provision.

Any of the persons above mentioned may also in like manner apply for and obtain an order for— For general purposes.

- (a.) The administration of the personal estate of the deceased :
- (b.) The administration of the real estate of the deceased :
- (c.) The administration of the trust (u).

The parties to be served with any such summons as now under consideration will be generally the parties interested, the residuary legatees or next of kin, or some of them, or the executors or administrators, as the case may be (x) ; and the Court may direct such other persons to be served as they or he may think fit (y). The summons must be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any question arising thereout (z). The Court or Judge may give any special directions touching the carriage or Parties to be served with summons.

(t) Order LV. r. 3.
 (u) Ibid. r. 4.
 (x) Ibid. r. 5.
 (y) Ibid. r. 6.
 (z) Ibid. r. 7.

execution of the judgment pronounced on this summons, or the service thereof upon persons not parties as they or he may think just (*a*); but it is not obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust, or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order (*b*).

Any second summons relating to same estate to be assigned to same Judge.

When any such summons as is now being dealt with has been taken out, every subsequent summons relating to the same estate or trust must be marked with the name of the Judge to whom for the time being the matter is assigned, and in case any such subsequent summons shall be marked with the name of another Judge, it is the duty of the executors, administrators, or trustees to apply for the transfer to such first mentioned Judge of such subsequent summons (*c*), who may without further consent order the transfer accordingly (*d*).

Extent of interference of summons with executor's powers.

The issue of a summons not for general administration, but for one of the limited purposes before mentioned, is not to interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as any such interference or control may necessarily be involved in the particular relief sought (*e*).

Further consideration in Chambers.

Generally, with regard to any matter originating in Chambers, if at the first, or any subsequent hearing, it has been adjourned for further consideration, such matter, unless specially adjourned into Court, is brought on for further consideration by summons, which may be taken out by the plaintiff or party having the conduct of the

(*a*) Order LV. r. 9.

(*b*) Ibid. r. 10.

(*c*) Ibid. r. 11.

(*d*) Order XLIX. r. 6.

(*e*) Order LV. r. 12.

proceedings, after eight days from the filing of the Chief Clerk's certificate, and after the expiration of fourteen days from the filing of the certificate, such summons may be taken out by any other party. Six days must elapse between the service and hearing of the summons (*f*).

3. *Summonses for Guardianship and Maintenance* Guardianship and maintenance summons. (*g*).—The object of such an application as this is to have a guardian appointed to some infant, and to obtain an allowance for the infant's support. The summons is intituled in the matter of the infant, and is disposed of in Chambers. In support of it evidence must be given of the age of the infant; the nature and amount of his fortune and income; what relations he or she has; and the fitness of the proposed guardian (*h*). Of course when there is an existing suit there is no necessity to have recourse to this special provision, but the application for guardianship and maintenance is made as an interlocutory step therein, and the same evidence will have to be adduced unless it is already before the Court.

Every infant served with a petition, notice of motion, or summons in a matter, appears on the hearing by guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian is necessary, but the procedure is the same as in the case of an infant defendant to an action (*i*). Infant's appearance on petition, motion, and summons.

4. *Summonses under the Infants Marriage Settlement Act* (*k*). Under this Act a binding marriage settlement may be allowed by the Court in the case of a male infant at the age of twenty years, and in the case of a female infant at the age of seventeen years. The Statute does not extend to powers of appointment, as to which it has been expressly declared that they shall not be Infants Marriage Settlement Act.

(*f*) Order LV. r. 72.

(*g*) 15 & 16 Vict. c. 80, s. 26.

(*h*) Order LV. r. 25; Daniel's Ch. Pr. pp. 1189–1206.

(*i*) Order XVI. r. 19; ante, pp. 42, 63.

(*k*) 18 & 19 Vict. c. 43.

executed by an infant, and in case of any appointment under a power, or any disentailing assurance executed by an infant tenant in tail under this Act, it only takes effect if he afterwards attains full age.

Applications to be by summons, and evidence in support thereof.

Until now applications under this Act have been by petition, but it is now provided that all such applications are to be by summons (*l*); and in support thereof evidence must be produced to shew the following matters:—(a) the age of the infant; (b) whether any parents or guardians; (c) with whom infant living, and if no parents or guardians, what near relations the infant has; (d) the rank and position in life of the infant; (e) what the infant's property and fortune consist of; (f) the age, rank and position in life of the person to whom the infant is about to be married; (g) what property, fortune and income such person has; (h) the fitness of the proposed trustees, and their consent to act (*m*).

Proposals must be submitted to Judge.

The proposals for the settlement of the property of the infant, and of the person to whom such infant is proposed to be married, must be submitted to the Judge (*n*).

Discovery against Lord of Manor.

5. *Summonses for Discovery against Lord of a Manor.*—This is a case of an originating nature under the Rules of 1883, which provide that an order upon a lord of a manor to allow limited inspection of the Court Rolls may be made on the application of a copyhold tenant, supported by an affidavit that he has applied for inspection, and that the same has been refused (*o*).

Settled Land Act, 1882.

6. *Summonses under the Settled Land Act, 1882* (*p*).—Under this Act, with reference to leases and sales of settled estates, applications to the Court are often necessary. All such applications are by summons in

(*l*) Order LV. r. 2 (10).

(*m*) Ibid. r. 26.

(*n*) Ibid.

(*o*) Order XXXI. r. 19.

(*p*) 45 & 46 Vict. c. 38.

Chambers, usually served on the trustees or the tenant for life, as the case may be, and no other person is served in the first instance (*g*). The title of the parties is verified by affidavit (*r*), and where capital money is paid into Court there must be an affidavit in support of the summons for leave to pay in, shewing (1) the name and address of the person desiring to pay in; (2) the place where he is to be served with notice of any proceeding relating to the money; (3) the amount of the money to be paid into Court, and the account to the credit of which it is to be placed; (4) the name and address of the tenant for life under the settlement by whose direction the money is to be paid into Court; and (5) the short particulars of the transaction in respect of which the money is payable (*s*).

7. *Summonses under Vendors' and Purchasers' Act, 1874 (t)*.—Under this statute disputes arising on requisitions between vendor and purchaser may be summarily disposed of by summons in Chambers.

A special case as a means of commencing proceedings is rarely used. It occurs where the parties are agreed on the facts and simply want a declaration of the Court on a point of law and nothing beyond this. It is allowed under the Statute 13 and 14 Vict. c. 35 (*u*); and though the Rules of 1880 provided that no such special case should any longer be used, it is now allowed under the Rules of 1883 (*v*). Special case.

A writ of *distringas* was a writ issued under the Statute 5 & 6 Vict. c. 5, s. 5, for the purpose of restraining the transfer of some fund not in Court, or the payment of the dividends thereon. The process of *distringas* Distringas.
Substituted process.

(*g*) Settled Land Act Rules, 1882, rr. 2, 4.

(*r*) Ibid. r. 7.

(*s*) Ibid. r. 10.

(*t*) 37 & 38 Vict. c. 78, s. 9.

(*u*) See hereon Daniel's Ch. Pr. 1701-1711. As to a special case in the course of an action see ante, pp. 109, 110, the rules as to which there stated apply generally so far as they can to a special case originating proceedings.

(*v*) Order xxxiv. r. 8.

still exists, but a writ is no longer issued as formerly (*x*). Any person claiming to be interested in any stock, which includes shares, securities, and money standing on the books of a company (which comprises the Bank of England and other public companies) (*y*), may on filing an affidavit by himself or his solicitor, in the form given in the Rules of 1883 (*z*), deposing to the fact of such interest, with a notice in a form also given (*a*), stating what is intended and desired, and on procuring an office copy of the affidavit and duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the company, appending to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) to that person are to be sent (*b*). The effect of this service is exactly the same as the effect formerly of a writ of distringas—viz., not absolutely to prevent any dealing with the stock in question, but that on any application being made to deal with it, notice is given to the person on whose behalf the affidavit was filed (*c*). Any such notice is to be deemed to have been duly sent if sent through the post by a prepaid letter, directed to the person at the address originally stated in the notice served, or any address since substituted, whether such person to whom the notice is sent is living or not (*d*). If whilst any such notice continues in force, application is made to deal with the stock or dividends in question, if the person on whose behalf the notice was given does nothing further for the period of eight days from such request, the company cannot refuse to permit the dealing with the stock or dividends as requested, but within this

(*x*) Order XLVI. r. 2.

(*y*) Order XLVI. r. 3.

(*z*) Ibid. r. 4; Form No. 27 in Appendix B. to Rules of 1883.

(*a*) Ibid.; Form No. 29.

(*b*) Ibid. rr. 4, 5.

(*c*) Ibid. r. 8.

(*d*) Ibid. r. 6. Substitution of address may always be effected by service of a memorandum thereof on the company in the manner required for service of the original notice (Order XLVI. r. 7).

period such person may obtain a restraining order or commence an action, and in it obtain an injunction against dealing with the stock or dividends in question (*e*). Any notice given as aforesaid may be withdrawn by the person who gave it on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice, or by petition or summons at Chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice (*g*).

If the person who files a notice in the nature of a *distringas* desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served (*h*).

A restraining order is closely allied to a *distringas*. It is an order obtained *ex parte* on motion or petition in a summary way, without any regular action being commenced, on evidence that the applicant is interested in a certain fund in the Bank of England or other public company, and that it is about to be wrongfully dealt with. It has the same effect as an injunction, but is only intended for interim purposes, and an action should afterwards be commenced, and an injunction obtained therein in the ordinary way. There does not therefore seem to be much, if any, object to be gained by applying for a restraining order, but where something more than a *distringas* is required it is better to at once commence an action, and apply therein for an injunction (*i*).

(*e*) Order XLVI. r. 10.

(*g*) Ibid. r. 9.

(*h*) Ibid. r. 11.

(*i*) 5 & 6 Vict. c. 5, s. 4. Daniel's Ch. Pr. pp. 1537-1540.

PART IV.
ON APPEAL.

CHAPTER I.

APPEALS TO HER MAJESTY'S COURT OF APPEAL (*k*).

ALL appeals to Her Majesty's Court of Appeal from interlocutory orders must be brought within twenty-one days, and appeals from other orders within one year, unless special leave is given to bring the appeal after these times, and the time for appealing from any order or decision made or given in the matter of the winding-up of a company under the provisions of the Companies Acts, 1862 and 1867, or any order or decision made in the matter of any bankruptcy or in any matter not being an action, is the same as the time limited for appeal from an interlocutory order (*l*). Where an *ex parte* application to the Court below has been made and refused, an application to the Court of Appeal for a similar purpose must be made within four days from the date of such refusal (*m*). Leave to bring an appeal after these times will only be granted on shewing some special circumstances. The period within which to appeal, is calculated in the case of an appeal from an order in Chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases from the time at which the judgment or order is signed, entered,

(*k*) As to the constitution, &c., of the Court, see ante, pp. 19, 20.

(*l*) Order LVIII. rr. 9, 15.

(*m*) Ibid. r. 10.

or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal (*n*).

Mode of
appealing.

Appeals take place by way of re-hearing, and are brought by notice of motion in a summary way, and no petition, case, or other formal proceeding, except such notice of motion, is necessary. The notice of motion specifies whether the whole or part only of the judgment or order in question is appealed from, and in the latter case specifies such part (*o*). This notice of appeal—which is a fourteen days' notice if the appeal is from a judgment or a final order, and a four days' notice if from an interlocutory order (*p*)—must be served upon all parties directly affected by the appeal, and it is not necessary to serve parties not so affected; but the Court of Appeal has power to direct notice of the appeal to be served on all or any of the parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal. Any notice of appeal may be amended by leave (*q*). The party appealing is called the appellant, and the party against whom the appeal is directed, the respondent.

Length of
appeal notice.

Setting down.

The notice of appeal having been given, the appeal must be set down for hearing within the time named in the notice of appeal, or if the Court is not then sitting, on the next day on which it does sit, otherwise the respondent is entitled to treat the motion as abandoned (*r*). The appeal is set down by producing to the proper officer of the Court of Appeal the judgment or order appealed from, or an office copy thereof, and leaving with him a notice of the appeal to be filed; the officer then sets down the appeal in the list, and it comes on in its proper order to be heard (*s*).

(*n*) Order LVIII. r. 15.

(*o*) Ibid. rr. 1, 2.

(*p*) Ibid. r. 3.

(*q*) Ibid. r. 2.

(*r*) Haynes' Ch. Pr. p. 209.

(*s*) Order LVIII. r. 8.

Under ordinary circumstances, no deposit has to be made, or security given, on appealing; but a deposit or other security for the costs to be occasioned by any appeal may, under special circumstances, be directed by the Court of Appeal (*t*). Any application asking for a deposit or other security from the appellant, should be made immediately on receiving the notice of appeal; and as to what will constitute "special circumstances" for the Court to make such an order, the fact of the appellant being out of the jurisdiction of the Court, or in some cases in an insolvent state, or in a state of poverty, may be sufficient. However, of course, what will or will not in particular cases amount to "special circumstances" is a matter in the discretion of the Court.

It sometimes happens that the respondent to an appeal is also dissatisfied with the judgment or order on some points. In such a case it is not necessary for him to give notice of motion by way of cross appeal, but if he intends, upon the hearing of the appeal, to contend that the decision of the Court below should on any point be varied, he must, if the appeal is from a final judgment, give an eight days' notice, and if from an interlocutory order, a two days' notice of such his intention to any parties who may be affected by such contention, and the whole matter can be then dealt with at the hearing. The time for giving this notice appears to be within eight days from notice of appeal from a final judgment, and within two days from notice of appeal from an interlocutory order, or such other time as may be named by any special order, but the Rules are not clearly worded on this point. It is however also provided, that the omission to give such notice is not to diminish the power of the Court of Appeal, but may in the discretion of the Court be ground for an adjournment of the appeal, or for a special order as to costs (*u*).

(*t*) Order LVIII. r. 15.

(*u*) Ibid. rr. 6, 7.

Evidence on appeal.

An appeal is sometimes only on a point of law, but sometimes it is on a matter of fact. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question is, subject to some special order, brought before the Court of Appeal thus: (1) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed and office copies of such of them as have not been printed; and any evidence by affidavit not printed in the Court below may be ordered to be printed for the use of the Court of Appeal, but should not be printed without such order. (2) As to any evidence given orally, by the production of a copy of the Judge's notes or such other materials as the Court may deem expedient (x).

New evidence on appeal.

The Court of Appeal is not necessarily restricted to the evidence used in the Court below, but has full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination of witnesses in Court, by affidavit, or by depositions taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from judgments after trial of any cause or matter upon the merits, further evidence (except as to matters subsequent as just mentioned) is only admitted by special leave of the Court, which is only granted on shewing some special grounds (y). Where a party on an appeal intends to apply for special leave to adduce further evidence, he need not give any formal notice of motion, but may give (without leave) notice to the other side of his intention to apply at the hearing for leave to give the evidence (z).

(x) Order LVIII. rr. 11, 12.

(y) Ibid. r. 4.

(z) *Hastie v. Hastie*, 1 Ch. D. 562.

The Court of Appeal has all powers as to amendment or otherwise in the same way as the Court below, and has power to draw inferences of fact, and give any judgment and make any order which ought to have been made, and to make such provision or other order as the case may require. The Court of Appeal has also power to make such order as to the whole or any part of the costs of the appeal as may be just (*a*). If at the hearing of an appeal it appears to the Court of Appeal that a new trial ought to be had, it is lawful for such Court, if it shall think fit, to order that the verdict and judgment shall be set aside and a new trial be had (*b*).

The appeal comes on in due course to be heard. Where the subject-matter of it is a final order, decree, or judgment, the hearing must be before not less than three Judges of the Court sitting together, but when the subject-matter of the appeal is an interlocutory order, decree, or judgment, the hearing may be before two Judges of the Court sitting together, and if any doubt arises as to what judgments, decrees, or orders are final and what are interlocutory, the point is determined by the Court of Appeal (*c*). No Judge of the Court of Appeal may sit as a Judge on the hearing of any appeal from any judgment or order made by himself or by any Divisional Court of the High Court of which he was and is a member (*d*). However, a Judge has been held to be competent to take part in an appeal from a Divisional Court of which he is a member on a case in which he was not one of the sitting Judges when it was heard in the Division (*e*). On the argument of the appeal two counsel on each side are allowed to be heard. The Court finally gives its

(*a*) Order LVIII. r. 4.

(*b*) Ibid. r. 5.

(*c*) Jud. Act, 1875, s. 12.

(*d*) Ibid. s. 4.

(*e*) *Fisher v. Val de Travers Paving Co.*, 1 C. P. D. 259; 45 L. J., C. P. D. 135.

decision, either dismissing the appeal, or discharging or varying the judgment or order complained of.

Incidental
directions on
appeal.

In any cause or matter pending before the Court of Appeal any direction incidental thereto, not involving the decision of the appeal itself, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court may at any time during vacation make any such interim order as he may think fit to prevent prejudice to the claims of any parties pending an appeal; but every such order made by a single Judge may be discharged or varied by the Court (*g*).

Staying
execution.

An appeal does not of itself stay execution or other proceedings under the decision appealed from; for it to have this effect application must be made to the Court appealed from or any Judge thereof or to the Court of Appeal; and no intermediate act or proceeding is invalidated except so far as the Court appealed from may direct (*h*). Any application for a stay of execution or other proceedings, should be made in the first instance to the Court below (*i*), and any such application is by motion (*k*), of which usually notice should be given to the other side, and, as a general rule, if the order is made the applicant will be put under some special terms—*e.g.*, bringing money into Court. Interest for such time as execution has been delayed by the appeal is to be allowed, unless the Court or a Judge otherwise orders, and the Taxing Master may compute such interest without any order for that purpose (*l*).

Interest
allowed for
delay.

Application to
Court below
before Court
of Appeal.

Wherever an application may be made to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it must be made in the first instance to the Court or Judge below (*m*).

(*g*) Jud. Act, 1873, s. 52.

(*h*) Order LVIII. r. 16.

(*i*) Ibid. r. 17.

(*k*) Ibid. r. 18.

(*l*) Ibid. r. 19.

(*m*) Ibid. r. 17.

Every application to a Judge of the Court of Appeal is made by motion, and the ordinary rules as to motions (*n*) apply to any such application (*o*).

Where a question has been argued before the Judge himself in Chambers, in the Chancery Division, an appeal may be made direct to the Court of Appeal without leave. Where, however, it is intended to go direct to the Court of Appeal, application should be made to the Judge for a certificate that he does not require to hear further argument, or to adjourn the summons into Court for argument (*p*). If, however, he refuses, the Court of Appeal will allow the case to be set down without (*q*).

Orders made by consent, or as to costs only (*r*), which are by law left to the discretion of the Court, are not subject to appeal, except by special leave of the Court or Judge making such order (*s*). And where any Act of Parliament provides that any decision shall be final no appeal lies (*t*). There is no appeal from an order made by a Judge in Chambers under the Charitable Trusts Acts, 1853, sect. 28, where the gross annual income of the charity has not been declared by the Charity Commissioners to exceed £100, unless by special leave (*u*). There is also no appeal in interpleader matters, except by special leave (*x*).

The old processes of appeal by bills of exception, and proceedings in error are abolished, and do not require any notice here.

(*n*) See ante, pp. 184, 185, and see Order LII.

(*o*) Order LVIII. r. 18.

(*p*) Otherwise to go direct from Chambers to the Court of Appeal leave would have to be obtained; see Jud. Act, 1873, s. 50.

(*q*) Haynes' Ch. Pr. p. 202.

(*r*) For some cases decided on the point of what is meant by "costs only," see Haynes' Ch. Pr. p. 203.

(*s*) Jud. Act, 1873, s. 49.

(*t*) 39 & 40 Vict. c. 59, s. 20.

(*u*) Order LV. rr. 13, 14.

(*x*) Order LVII. r. 11. Ante, pp. 107-109.

Enrolment.

Under the old practice the enrolment of a decree or order in Chancery prevented any appeal except to the House of Lords. There is, however, now no object gained by the enrolment, for the powers of the Court of Appeal are specially vested in it by the Judicature Act, 1873 (y).

(y) 36 & 37 Vict. c. 66, s. 19.

CHAPTER II.

APPEALS TO THE HOUSE OF LORDS (z).

EVERY appeal to the House of Lords is brought by way of petition, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty in her Court of Parliament (*a*). A form of petition is given by the Orders of November, 1876, under the Appellate Jurisdiction Act (39 & 40 Vict. c. 59), and it must be signed by two counsel, who have either attended as counsel in the Court below, or purpose attending as counsel at the hearing in the House of Lords, and they must certify that in their opinion it is a proper case to be heard before the House (*b*). The time limited for presenting petitions to the House is within one year from the date of the judgment or order appealed from (*c*).

The appeal is printed on parchment, and duly lodged in the Parliament Office for presentation to the House, and an order is issued thereon for service on the respondents or their solicitors, ordering them to lodge cases in answer to the appeal, which order must be returned to the Parliament Office together with an affidavit of service, within six weeks' time, or, in the case of Irish and Scotch appeals, within eight weeks' time (*d*).

(z) As to origin and present constitution of the House of Lords, see ante, pp. 31-33.

(a) 39 & 40 Vict. c. 59, s. 4.

(b) Standing Order 2.

(c) Ibid. 1.

(d) Standing Order 3, and Orders of November, 1876, under Appellate Jurisdiction Act.

Security.

Within one week after the presentation of the appeal, security must be given for the costs of it. - The security consists of the appellant's own recognizance, and the payment in by him to the account of the Fee Fund of the House of Lords of the sum of £200, or, instead of that payment, the giving of a bond with two sufficient sureties to the amount of £200. In the event of this latter mode of security being adopted, two clear days' previous notice of the names proposed must be given to the solicitor or agent of the respondent. The recognizance and bond must be returned into the Parliament Office, duly executed, within one week from the date of their having issued to the solicitor or agent of the appellant. On default by the appellant in complying with the above requirements, the appeal stands dismissed (e).

Printed cases.

The appeal having been lodged, the order served, and the security given, the next step is the lodging by the parties of their cases in the Parliament Office. These cases contain the different parties' statements, and must be printed; in English appeals they must be lodged within six weeks from the date of the presentation of the appeal, and in Scotch and Irish cases within eight weeks. . The cases must be signed by one or more counsel, who have attended as counsel in the Court below, or who purpose attending as counsel at the hearing in the House (f). If the parties are able to agree on their statement of the subject-matter, a joint case may be lodged, with reasons *pro* and *con*. In addition to the printed cases or case, a printed appendix or printed appendices, also have to be lodged, consisting of such documents or parts thereof used in evidence in the Court below, as may be necessary for reference on the argument of the appeal (g).

(e) Standing Order 4.

(f) Ibid. 5.

(g) Orders of November, 1876, under Appellate Jurisdiction Act.

If any respondent is dissatisfied with the judgment Cross appeals. or order complained of by the appellant, he must, within the time above noticed for lodging his case, present a cross appeal (*h*).

The appeal is set down for hearing on the first Setting down sitting day after the expiration of the time allowed for of appeal. the respondent to lodge his case, or as soon before, at the option of either party, as all respondents' cases have been lodged. On default by the appellant, the appeal stands dismissed (*i*).

The appeal in due course comes on to be argued, and Hearing and is disposed of by the decision of the House, which may disposal of make an order as to payment of costs, and provision is appeal. made for the taxation of such costs (*k*).

(*h*) Standing Order 6. Orders of November, 1876, under Appellate Jurisdiction Act.

(*i*) Standing Order 5.

(*k*) See hereon Haynes' Ch. Pr. 215-224.

CHAPTER III.

APPEALS FROM INFERIOR COURTS.

Appeals to be
to Divisional
Courts.

APPEALS from inferior Courts, which might, under the old practice, have been brought to any Court or Judge whose jurisdiction is now transferred to the High Court of Justice, may be heard by Divisional Courts of the High Court, and the determination of such appeals by such Divisional Courts is final, unless special leave to appeal from the same to the Court of Appeal is given by the Divisional Court by which any such appeal from an inferior Court has been heard (*l*). Every Judge of the High Court for the time being is a Judge for the purpose of hearing and determining these appeals as just mentioned. All such appeals (except Admiralty Appeals, which are assigned to the Admiralty Division) are entered in one list by the officers of the Crown Office Department of the Central Office of the Supreme Court, and are heard by such Divisional Court composed of the Judges of the Queen's Bench Division, as the president of that Division from time to time directs (*m*).

County Court
appeals.

The most usual appeals from inferior Courts occurring in practice are appeals from County Courts. These appeals may be either in the form of a case (*n*) or by motion (*o*).

(*l*) Jud. Act, 1873, s. 45. Order LVIII. r. 1. It may be noticed that it has been decided that an appeal from the Lord Mayor's Court lies to the Divisional Court only, and that there is no appeal to the Court of Appeal without special leave. *Appleyard v. Judkins*, 3 C. P. D. 489.

(*m*) Order LIX. r. 4.

(*n*) 13 & 14 Vict. c. 61, s. 14.

(*o*) 38 & 39 Vict. c. 50, s. 6. As to the cases in which a party has a right of appeal, see Pollock and Nicol's County Court Practice, pp. 235-238.

A party appealing by means of a case must within ten days after the County Court decision give notice of appeal in writing to the other party or his solicitor, stating therein the ground on which he appeals. The notice must be signed by the appellant, his solicitor, or agent, and must be served on the Registrar of the County Court, as well as on the successful party. The notice of appeal does not operate as a stay of proceedings unless otherwise ordered. Within the same period of ten days, the party appealing must give security to the Registrar of the Court for the costs of the appeal, and if he be defendant, for the amount of the judgment, in case the appeal should be dismissed. The security may be either a bond executed by the appellant and two sureties, or a deposit of money; and if the appellant fails to give security, the Court will not hear the appeal. The case is then drawn up by the appellant or his solicitor, and submitted to the other party, and if possible the same is agreed on between them; but if they cannot agree on it, it is settled by the County Court Judge. It is finally signed by him and sealed with the seal of the Court, and within three days thereafter one copy is deposited with the Registrar of the County Court, and one copy sent to the successful party or his solicitor (*p*). It is also duly entered by the appellant at the Crown Office Department of the Central Office of the Supreme Court for hearing, within the same period of three days, and notice thereof given to the other party, and the appellant must also, four clear days before the day appointed for argument, deliver two copies of the case, at the proper office, for the use of the Judges of the Divisional Court to which such cause has been assigned for argument. The appeal then comes on in due course, and is disposed of by the Divisional Court.

A motion is another and now more usual mode of Motion.

(*p*) Pollock and Nicol's County Court Practice, pp. 240-242.

appealing from a County Court. Any person aggrieved by the ruling, order, direction or decision of a County Court Judge, and having a right of appeal may, at any time within eight days after the same shall have been made or given, appeal against it to the Divisional Court by motion instead of by special case. If the Divisional Court is not then sitting the motion may be made to any Judge of the High Court sitting in Chambers (*q*).

Practice.

The course of practice under this provision is, in the first instance, to obtain from the County Court Judge a copy of his notes made at the hearing before him, and also of the objection on the point of law made before him at the hearing, and this such Judge is bound to furnish on being applied to for it, at the expense of the party requiring it (*r*). This being obtained notice of motion is given in the ordinary way, and generally the rules as to motions apply (*s*). The motion is entered, and in due course it comes on to be heard and is disposed of.

**When no
appeal from
County Court.**

No appeal lies from the decision of a County Court, if before such decision is pronounced both parties agree in writing, signed by themselves or their solicitors or agents, that the decision of the Judge shall be final. Such an agreement requires no stamp (*t*).

(*q*) 38 & 39 Vict. c. 50, s. 6.

(*r*) Ibid.

(*s*) Order LII. See ante, pp. 184, 185.

(*t*) 19 & 20 Vict. c. 108, s. 69.

APPENDIX.

I.

A TABLE OF SOME OF THE PRINCIPAL TIMES OF PROCEEDINGS.

ACCOUNT UNDER ORDER XV. . . .	Application may be made in default of appearance, or at any time after appearance, writ being indorsed with claim for an account.
ADMISSIONS OF FACT, NOTICE FOR. . . .	May be given 9 days before trial ; admissions should be made within 6 days of such notice.
AFFIDAVITS	When evidence by consent to be by affidavits, plaintiff's affidavits must be filed within 14 days after consent ; defendant's affidavits within 14 days of delivery of list of plaintiff's affidavits ; and plaintiff's affidavits in reply within 7 days of expiration of the time for defendant's affidavits. Notice for cross-examination on, must be served within 14 days after time for filing affidavits in reply. 2 days' notice of intention to read affidavits filed in another action necessary, and if for use at trial then notice must be given within 1 month of issue joined (see <i>ante</i> , p. 167).
AMENDMENT. . . .	Writ of summons may be amended at any time by leave. (As to when pleadings may be amended without leave, see <i>ante</i> , p. 81.) When an order is obtained for leave to amend, amendments must be made within 14 days if no time named.
ANSWER TO INTERROGATORIES :	<i>See</i> DISCOVERY.
APPEAL	From a District Registrar to a Judge within 6 days. From a Master to a Judge within 4 days. From a Judge in Chambers to a Divisional Court within 8 days. To Court of Appeal from interlocutory orders, winding-up orders, or in bankruptcy, within 21 days. To Court of Appeal from an <i>ex parte</i> application within 4 days.

APPEAL—*continued.*

To Court of Appeal in other cases within 1 year
Notice of, 14 days if appeal from a judgment, but
if from an interlocutory order 4 days.

Must be set down within time named in notice of
appeal.

Notice of, by a respondent in an existing appeal
8 days, if appeal from a judgment, but if from
interlocutory order 2 days.

To House of Lords within 1 year, but in case of
disability, within 1 year of disability ceasing, and
in case of absence within 5 years at utmost.

From County Court: When by special case, notice of
appeal and security for appeal within 10 days, and
case to be transmitted to Court of Appeal within
3 clear days after signature. When by motion,
same to be made within 8 days.

APPEARANCE. To writ of summons, if defendant within jurisdiction,
within 8 days after service—if not within it, then
within time fixed by order.

Defendant may appear though time expired, pro-
vided judgment not signed.

Notice of and service of duplicate sealed memo-
randum must be effected on day of appearance, or
sent by post that day.

When a notice given to a third party (see *ante*,
pp. 38, 39), if he wishes to dispute claim, he must
appear within 8 days.

ARBITRATION On compulsory reference under Common Law Prac-
tice Act, 1854, arbitrator must make award within
3 months of application and entering on reference.

Application to set aside award made on a com-
pulsory reference must be made within the first
7 days of the term next following the publication.

Application to set aside an award made on a sub-
mission to arbitration may be made at any time
before the last day of the sittings next after such
award has been made and published to the parties.

ARREST Where order made for and security going to be
given by Bond with sureties, objections to pro-
posed sureties must be made within 4 days
after receiving particulars.

BILL OF SALE With affidavit must be filed in Master's office within
7 days after execution.

CERTIFICATE OF CHIEF
CLERK

Opinion of Judge on any point arising on, may be
taken at any time during proceedings from sig-
nature by Chief Clerk.

Application to vary, within 8 clear days from filing,
except certificates to be acted on at Paymaster's
office without further order, or certificates on
passing receiver's accounts when 2 clear days.

CLAIM, STATEMENT OF	Not allowed at all where writ specially indorsed. Cannot be delivered in any case after 6 weeks from appearance. Where defendant gives notice requiring statement of claim, it must be delivered within 5 weeks from such notice.
COMMITMENT	Order of under Debtors' Act, 1869, remain in force for 1 year, but may be renewed.
CONCURRENT WRITS .	May be issued at any time whilst original writ remains in force.
COSTS	Judgment for after discontinuance may be signed, if not paid within 4 days after taxation. To review taxation objections must be carried in before certificate or allocatur, and then within 14 days of certificate or allocatur, summons to review taken out.
CROSS-EXAMINATION .	Notice for, must be served within 14 days after time for filing affidavits in reply.
COUNTER-CLAIM . . .	To be put in with statement of defence.
COUNTY COURT . . .	Summons to transfer to, must be taken out within 8 days of service of writ. Summons for trial in County Court can only be taken out after issue joined. Appeal from: <i>See</i> APPEAL.
DEFENCE, STATEMENT OF	Must be delivered within 10 days from delivery of statement of claim, or time limited for appearance whichever last. Where no statement of claim delivered or required, must be delivered within 10 days of appearance. When leave to defend given under Order XIV, then within time named in order, or if no time named, within 8 days after order. Where further defence or reply arises during action, and after defence put in, leave to set it up must be obtained within 8 days of its so arising.
DIRECTIONS, SUMMONS FOR	May be taken out at any time by any party; 4 days between service and return.
DISCONTINUANCE . .	Any time before taking any step in action after defence other than an interlocutory application, after that only by leave. Judgment for costs on, may be signed 4 days after taxation.
DISCOVERY	Interrogatories may be delivered in actions of fraud or breach of trust by plaintiff with statement of claim, or by defendant with statement of defence, or by either of them at any subsequent period before the close of the pleadings. In all other cases only by leave. Application to strike out any interrogatories must be made within 7 days of their delivery. Affidavit answering interrogatories to be filed within 10 days.

DISCOVERY—*continued.*

When notice given to produce certain documents for inspection in the course of the action, the party receiving such notice must within 2 days, if all documents referred to therein have been set out in his affidavit of documents, or if not, then within 4 days, give notice to the opposite party stating a time within 8 days from delivery of such notice at which the documents can be inspected by him.

DISMISSAL FOR WANT
OF PROSECUTION
ALLOWED IN FOL-
LOWING CASES :—

If statement of claim not delivered within the time allowed.

If notice of trial not given within the 6 weeks allowed from the close of the pleadings.

If default made in obeying an order for discovery or inspection.

DISTRICT REGISTRY When action may be removed from as a matter of right (see *ante*, pp. 103, 104).

DISTRINGAS PROCESS Affidavit and notice only have effect for 8 days from application to deal with fund.

EJECTMENT In an action for recovery of land, defence may be limited to a part, by serving notice to that effect within 4 days after appearance.

ENTRY OF CAUSE FOR TRIAL : See TRIAL.

EXECUTION May generally issue immediately after final judgment, but on a judgment, not being for money or land, after 14 days.

Writ of, in force for 1 year, but may be renewed for further period of 1 year, and so on from time to time.

After 6 years from date of judgment, or after change of parties, leave must be given to issue.

Also leave must be obtained to issue it on judgment *quando acciderint*.

FURTHER CONSIDERA-
TION Cause cannot be put in paper for hearing until after 10 days from setting down, and 6 days notice of its having been set down must be given.

GUARDIAN Notice of application for a guardian *ad litem* to be appointed to a defendant who has not appeared, must be served 6 clear days before day of hearing.

INSPECTION : See DIS-
COVERY Under notice to inspect and admit defendant should admit within 48 hours.

INTERPLEADER At any time after service of writ of summons.

INTERROGATORIES : See DISCOVERY.

JOINDER OF ISSUE If not delivered with reply, within 4 days after delivery of previous pleading.

JUDGMENT In summons for, under Order xiv. there must be 4 days between service and return.

Final judgment by default may be issued at expiration of time limited for appearance, if writ indorsed for liquidated amount; but if writ for unliquidated damages, then only interlocutory judgment.

JUDGMENT—*continued.*

Final judgment may be signed in default of statement of defence if claim for a fixed liquidated amount, but if for unliquidated damages, then only interlocutory judgment.

Where party does not appear at trial, and judgment goes against him, application to set it aside must be made within 6 days.

Where at trial, judgment not directed to be entered, plaintiff must set cause down on motion for judgment within 10 days after trial, otherwise defendant may do so.

No action can be set down on motion for judgment after 1 year.

JURY. Special, notice for to defendant, same as notice of trial.

Special, notice for to plaintiff 6 days before day for which notice of trial given.

LIMITATION OF ACTIONS

Actions must be brought within the following periods respectively :—

Advowsons, to recover, 3 adverse incumbrances, or 60 years, or at the utmost within 100 years.

Assault, 4 years.

Assumpsit, 6 years.

Covenant, 20 years.

Debt, speciality, 20 years.

Debt, simple contract, 6 years.

False imprisonment, 4 years.

Intestacies, share under, 20 years.

Justices, actions against, 6 calendar months.

Land, recovery of, 12 years : but if disability, 6 years from ceasing, the extreme period being 30 years.

Legacy, 12 years.

Libel, 6 years.

Mortgage, 12 years.

Slander, 2 years.

Trespass to person or goods, 4 years.

Under Lord Campbell's Act (9 & 10 Vict. c. 93), within 1 year of death ; if not brought within first 6 months by executor or administrator, person beneficially interested may bring action within remaining 6 months.

Under Employers' Liability Act, 1880 (43 & 44 Vict. c. 42), notice must be given within 6 weeks of injury, and action brought within 6 months of injury, or if death ensue, within 12 months of death.

MOTION, NOTICE OF. . . 2 clear days required.

MOTION FOR JUDGMENT: *See* **JUDGMENT.**

NEW TRIAL: *See* **TRIAL.**

NOTICE Of action, when required, 1 calendar month.

After no proceeding in an action for a year 1 month's notice necessary.

Of trial, 10 days, long ; 4 days, short.

NOTICE—*continued.*

	By defendant requiring a jury where he has a right to it within 4 days of receipt of notice of trial.
	For special jury, to defendant, same as notice of trial.
	" " to plaintiff, 6 days before day for which notice of trial given.
	Of motion, 2 days.
	Of taxing costs, 1 day.
ORDER	1 day's notice of appointment to settle.
PARTICULARS IN MITIGATION OF DAMAGES, &c., IN LIBEL OR SLANDER	Must be given 7 days before the trial.
PAYMENT INTO COURT	May be made by defendant immediately on being served with writ, or up to delivering his defence; afterwards only by leave.
	Plaintiff may, where liability not denied, within 4 days after notice of payment in, or if payment is stated in defence, then before reply, accept payment in satisfaction. If he does this, he gives notice thereof, and taxes his costs; and if not paid within 48 hours he may sign judgment for them.
PETITION	2 clear days between service and hearing.
PLEADING: <i>See</i> DIFFERENT TITLES	Where pleading amended opposite party may, within 8 days, put in an amended pleading.
	Where particulars ordered, same time allowed for pleading after delivery, as party had at time of application.
PROCEED SUMMONS TO	If not taken out by plaintiff within 10 days of passing and entering Judgment, may be taken out by any other party.
REPLEVIN	In superior Court, bond conditioned to commence action within 1 week.
	In County Court, within 1 month.
REPLY	Must be delivered within 3 weeks from defence.
	Further reply arising pending action, within 8 days after its arising.
REJOINDER	Within 4 days of previous pleading, and only allowed without leave if it simply contains joinder of issue.
SECURITY: <i>See</i> ARREST	Summons for security for costs should be taken out before issue joined.
SERVICE OF PLEADINGS, &c. Before 6 P.M., and on Saturdays before 2 P.M.	
SERVICE OF WRIT	Memorandum of, must be indorsed within 3 days after service.
SOLICITORS	Motion to strike solicitor off rolls, &c., must be served 10 days before time named for motion.
STATEMENT: <i>See</i> CLAIM: DEFENCE: REPLY.	
SUBPCENA	Remains in force for 12 weeks.
SUMMONS: <i>See</i> WRIT OF SUMMONS.	If originating proceedings, to be served 7 clear days before return. If otherwise 2 clear days before return.

- TIME, COMPUTING** . . . Where time allowed is not clear days, the first day not included, but the last is.
 Sunday, Christmas Day, and Good Friday not reckoned in periods of less than 6 days.
- TRIAL** Notice of, 10 days, but if under terms to take short notice, then 4 days.
 Place of, where no statement of claim, may be stated in notice delivered by plaintiff within 6 days of appearance.
 Notice of, to be given with reply, or at any time after issues of fact ready for trial; but if plaintiff do not give notice of trial within 6 weeks from close of pleadings, defendant may do so, or apply to dismiss action.
 Plaintiff in notice states mode of trial, but if other than by jury, in causes in which a right to a jury still exists, defendant may within 4 days of service of the notice of trial give a notice that he requires a jury.
 In London or Middlesex plaintiff may enter cause for trial same day as notice of trial given, or next day, defendant within 4 subsequent days, and if not entered by either party within 6 days notice of trial falls through.
 At the Assizes either party may enter cause for trial, but if entered by both, it is tried in the order of the plaintiff's entry.
 Instead of entering at the Assize town the action may be entered at District Registry at any time before the day next before the Commission day.
 8 days notice of motion for new trial.
 Notice of motion for new trial to be served within times following—viz., if the trial has taken place in London or Middlesex within 8 days after the trial; if it has taken place elsewhere within 7 days after the last day of the sitting on the Circuits during which the trial shall have taken place; the time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.
 When verdict or judgment obtained by reason of non-appearance of party, application to set it aside to be made within 6 days after trial.
- VACATIONS** Long Vacation from 10th August to 24th October.
- WRIT OF EXECUTION** : *See* EXECUTION.
- WRIT OF SUMMONS** . . . Remains in force for 12 months, but may be renewed for 6 months, and so on from time to time, on shewing reasonable efforts have been made to effect service, or for other good reason.
 Concurrent, may be issued at any time during currency of original writ.
 Service of, to be indorsed within 3 days thereafter.

II.

FORMS.

(1.) FORM OF GENERAL WRIT OF SUMMONS (*ante*, p. 45).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

VICTORIA, by the Grace of God, &c., to C.D., of in the county
of .

WE COMMAND YOU, that within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of A.B.

And take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, ROUNDALL, EARL of SELBORNE, Lord High Chancellor of Great Britain, the day of in the year of Our Lord One thousand eight hundred and .

Memorandum to be subscribed on the writ.

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or defendants*] may appear hereto by entering an appearance [*or appearances*] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

Indorsements to be made on the writ before issue thereof.

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at , or, this writ was issued by E.F., of , whose address for service is , solicitor for the said plaintiff, who resides at , or, this writ was issued by G.H., of , whose address for service is , agent for of , solicitor for the said

plaintiff, who resides at _____ [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any.]

Indorsement to be made on the writ after service thereof.

This writ was served by me at _____ on the defendant
18 . the day of

Indorsed the _____ day of 18 .
(Signed)
(Address)

(2.) FORM OF SPECIALLY INDORSED WRIT, UNDER ORDER III.,
RULE 6 (*ante*, p. 47).

18 . [Here put the letter and number.]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A. B. Plaintiff
and
C. D. Defendant.

VICTORIA, by the Grace of God, &c., to C. D., of _____ in the
county of _____

WE COMMAND YOU, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of _____
And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence.

Witness, ROUNDELL, EARL of SELBORNE, Lord High Chancellor of Great Britain, the _____ day of _____ in the year of Our Lord One thousand eight hundred and _____

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Indorsement :

STATEMENT OF CLAIM.

The plaintiff's claim is

PARTICULARS.

Place of Trial

(Signed)

And the sum of £ _____, [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ was issued by the said plaintiff, who resides at _____,
[or] this writ was issued by E. F., of _____,
whose address for service is _____, solicitor for the said plaintiff,

who resides at , [or] this writ was issued by G.H., of
whose address for service is , agent for of
solicitor for the said plaintiff, who resides at

This writ was served by me at on the defendant
on the day of 18 .
Indorsed the day of 18 .
(Signed)
(Address)

(3.) COSTS ON JUDGMENT UNDER ORDER XIV. (ante, p. 65).
18 . [Here put the letter and number.]

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.

Between A.B. Plaintiff
and
C.D. Defendant.

COSTS OF PLAINTIFF under Order dated day of 1881.

	1881	£	s.	d.
Agency Charges, if any.	Letter before action	8	6	
	Instructions to sue	6	8	
	Writ and attending to issue and paid	11	8	
	Special indorsement	5	0	
	Copy for service	1	0	
	Service of writ	5	0	
Further Ad- journments, if any.	Affidavit of service and oath	6	6	
	Instructions for affidavit in support of sum- mons for leave to sign judgment	6	8	
	Drawing same, folios 6	6	0	
	Engrossing	2	0	
	Attending deponent to be sworn	6	8	
	Paid oath	1	6	
	Copy affidavit for defendant's solicitor	2	0	
	Paid filing	2	0	
	Summons for leave to sign judgment, copy to file and copy and service	9	6	
	Attending summons, same adjourned	3	4	
	Attending adjourned summons, Order made	6	8	
	Order, copy and service	6	6	
	Close copy Order	1	0	
	Drawing judgment	3	4	
	Attending to sign	6	8	
	Paid and for office copy	11	0	
	Drawing costs and two copies, folios 5	5	0	
	Notice to tax and service	4	0	
	Attending taxing	6	8	
	Paid taxing			
	Sittings fee, &c. (15s. or if agency £1 1s.)			

The following notice will be indorsed on the copy of the costs delivered to defendant's solicitor.

To Mr. of

Defendant's Solicitor.

TAKE NOTICE that I shall attend at the Master's Office, Royal Courts of Justice, Strand, London, on the day of 1883, at o'clock in the noon, to tax the within costs.

Dated this day of 1883.

Yours, &c., X. Y.,
Plaintiff's Solicitor.

(4.) FORM OF ORDINARY STATEMENT OF CLAIM IN ACTION
IN QUEEN'S BENCH DIVISION (*ante*, p. 70).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.

Writ issued the day of 18 .
Between A.B. Plaintiff
and
C.D. Defendant.

STATEMENT OF CLAIM.

The plaintiff's claim is for the price of goods sold, and delivered.

PARTICULARS.

1881—31st December.—

	£ s. d.
Balance of account for Butcher's meat to this date	35 10 0

1882—1st January to 31st March—

Butcher's meat	74 5 0
--------------------------	------------

	109 15 0
--	--------------

1882—1st February.—Paid	45 0 0
-----------------------------------	------------

Balance due	£64 15 0
-----------------------	--------------

Place of trial, London.

, (Signed)

DELIVERED THE	DAY OF	18 .
BY	PLAINTIFF'S SOLICITOR	

(5.) FORM OF ORDINARY STATEMENT OF DEFENCE IN ACTION
IN QUEEN'S BENCH DIVISION (*ante*, p. 72).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.

Writ issued the day of 18 .

Between *A.B.* Plaintiff
and
C.D. Defendant.

STATEMENT OF DEFENCE.

1. The defendant did not order the goods.
2. The goods were not delivered to the defendant.
3. The price was not £

(Signed)

DELIVERED THE DAY OF 18 .
BY DEFENDANT'S SOLICITOR.

(6.) FORM OF ORDINARY REPLY IN ACTION IN QUEEN'S
BENCH DIVISION (*ante*, p. 77).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.
Queen's Bench Division.

Writ issued the day of 18 .

Between *A.B.* Plaintiff
and
C.D. Defendant.

REPLY.

The plaintiff as to the defence says that—
He joins issue.

(Signed)

DELIVERED THE DAY OF 18 .
BY PLAINTIFF'S SOLICITOR.

(7.) FORM OF AFFIDAVIT OF DOCUMENTS (*ante*, p. 96).18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

I, the above-named defendant C.D., make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in question in this suit set forth in the first and second parts of the first schedule hereto.

2. I object to produce the said documents set forth in the second part of the said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts as far as may be.*]

4. I have had, but have not now, in my possession or power the documents relating to the matters in question in this suit set forth in the second schedule hereto.

5. The last-mentioned documents were last in my possession or power on [*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose possession they now are.*]

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

(8.) FORM OF NOTICE TO PRODUCE DOCUMENTS FOR

INSPECTION (*ante*, p. 97).18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

TAKE NOTICE that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim, or defence, or affidavit, dated the* day of]

Describe documents required.

X.Y.,
Solicitor to the

To Z.,
Solicitor for

(9.) FORM OF NOTICE OF APPOINTMENT TO INSPECT
DOCUMENTS (*ante*, p. 97).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between *A.B.* Plaintiff
and
C.D. Defendant.

TAKE NOTICE that you can inspect the documents mentioned in your notice of the day of [*except the deed numbered in that notice*] at [*insert place of inspection*] on Thursday next the inst., between the hours of 12 and 4 o'clock.

Or, that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the day of
A.D. , on the ground that [*state the ground*] :—

X. Y.,
Solicitor to the

(10.) FORM OF NOTICE TO ADMIT FACTS (*ante*, pp. 82, 119).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between *A.B.* Plaintiff
and
C.D. Defendant.

TAKE NOTICE that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified; and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

G.D., Solicitor [*or agent*] for the plaintiff [*or defendant*].

To *E.F.*, Solicitor [*or agent*] for the defendant [*or plaintiff*].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

18 . [*Here put the letter and number.*]

— Division.

C.D. Defendant.

Provide that this admission is made for the purposes of this action only, and is not an admission to be used against the defendant [or plaintiff] on any other occasion, or by any one other than the plaintiff [or defendant or party requiring the admission].

***E.F.*, Solicitor [or agent] for the defendant [or plaintiff].**

1. That John Smith died on the 1st of January, 1870.	1.
2. That he died intestate.	2.
3. That James Smith was his lawful son.	3. But not that he was his only lawful son.
4. That Julius Smith died.	4. But not that he died on the 1st of April, 1876.
5. That Julius Smith never was married.	5.

18 . [*Here put the letter and number.*]

— Division.

C.D. Defendant.

[Here state all matters or proceedings previous to trial on which directions are required.]

This summons was taken out by

To

(13.) FORM OF ORDER FOR DIRECTIONS PURSUANT TO
ORDER XXX. (*ante* p. 114.)

18. [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

Upon hearing
and upon reading
follows :—

it is ordered as

1. That the plaintiff deliver to the defendant further and better particulars with dates and items of his claim, and that unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof.

2. That the plaintiff and defendant be at liberty to deliver to each other interrogatories in writing, and that the said parties do respectively answer the said interrogatories as prescribed by Order XXXI., rules 8 and 26.

3. That the be at liberty to issue a commission for the examination of witnesses on his behalf at and that the trial of the action be stayed until the return of the said commission, the usual long order for the said commission to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Master.

4. That the action be tried in the county of by a Judge.

5. That either party be at liberty without further summons, to apply to the Master herein for further directions, such application to be made upon two clear days' notice to be served upon the other party.

6. That the costs of this application be costs in the action,

Dated day of 18 .

(14.) NOTICE OF TRIAL (*ante*, p. 115).

18. [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

TAKE NOTICE of trial of this action [*or of the issues in this action ordered to be tried*] by a judge and jury [*or as the case may be*] in [*or as the case may be*] for the day of next.

Dated 18 . A.B., PLAINTIFF'S SOLICITOR.

To C.D., DEFENDANT'S SOLICITOR [*or agent*].

(15.) FORM OF NOTICE TO PRODUCE DOCUMENTS AT TRIAL

(ante, p. 118).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

TAKE NOTICE, that you are hereby required to produce and show to the Court on the trial of this all books, papers, letters, copies of letters, and other writings and documents in your custody, possession, or power, containing any entry, memorandum, or minute relating to the matters in question in this and particularly

Dated the day of 18 .

To the above named	{	(Signed)
		of
h solicitor or agent		agent for
		solicitor for the above-named

(16.) FORM OF NOTICE TO INSPECT AND ADMIT DOCUMENTS

(ante, p. 119).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

— Division.

Between A.B. Plaintiff
and
C.D. Defendant.

TAKE NOTICE that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at on , between the hours of ; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed)

To E.F., Solicitor [*or agent*] for
defendant [*or plaintiff*].

G.H., Solicitor [*or agent*] for plaintiff [*or defendant*].

[Here describe the documents, the manner of doing which may be as follows:—]

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A.B.</i> and <i>C.D.</i> first part, and <i>E.F.</i> second part	January 1, 1848.
Indenture of lease from <i>A.B.</i> to <i>C.D.</i>	February 1, 1848.
Indenture of release between <i>A.B.</i> , <i>C.D.</i> first part, &c. . .	February 2, 1848.
Letter, defendant to plaintiff	March 1, 1848.
Policy of insurance on goods by ship " <i>Isabella</i> ," on voyage from Oporto to London	December 3, 1847.
Memorandum of agreement between <i>C.D.</i> , captain of said ship, and <i>E.F.</i>	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A.B.</i> on and accepted by <i>C.D.</i> , indorsed by <i>E.F.</i> and <i>G.H.</i> . .	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of <i>A.B.</i> in the parish of <i>X.</i>	January 1, 1848.	Sent by General Post, February 2, 1848. Served March 2, 1848, on defendant's attorney by <i>E.F.</i> , of —
Letter—plaintiff to defendant	February 1, 1848	
Notice to produce papers . .	March 1, 1848	
Record of a Judgment of the Court of Queen's Bench in an action, <i>F.S.</i> v. <i>F.N.</i> . .	Trinity Term, 10th Vict.	
Letters Patent of King Charles II. in the Rolls Chapel . .	January 1, 1680.	

(17.) SPECIMEN FORM OF STATEMENT OF CLAIM IN ACTION
IN CHANCERY DIVISION (*ante* p. 162).

18 . [Here put the letter and number.]

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

1883.

Mr. Justice.

Writ issued

1883.

Between *A.B.* Plaintiff.

and

C.D. & *E.F.* Defendants.

Statement of Claim.

1. The plaintiff is residuary legatee of *A.B.* of the City of Bath, who died March 3rd, 1882, having made his will dated March 2nd, 1882, and appointed the defendants his executors, who proved his will April 6th, 1882.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows:—

C.D. owed to the testator £1,000, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to *C.D.* for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims :—

- (1.) Account of testator's personal estate on footing of wilful default.
- (2.) Administration of the testator's personal estate.

(Signed)

DELIVERED THE DAY OF 1883.
By PLAINTIFF'S SOLICITOR.

(18.) SPECIMEN FORM OF STATEMENT OF DEFENCE IN AN ACTION IN THE CHANCERY DIVISION (*ante*, p. 162).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

Writ issued

18 .

Between *A.B.* Plaintiff

and

C.D. and *E.F.* Defendants.

Statement of Defence

1. The defendants do not admit the Plaintiff's claim.
2. The claim is barred by the Statute of Limitations.
3. The defendants have not been guilty of the wilful default alleged in the statement of claim or any other wilful default.

(Signed)

DELIVERED THE DAY OF 18 .
By DEFENDANTS' SOLICITOR.

(19.) SPECIMEN FORM OF STATEMENT OF REPLY IN AN ACTION IN THE CHANCERY DIVISION (*ante*, p. 162).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

Chancery Division,

Mr. Justice

Writ issued

18 .

Between *A.B.* Plaintiff

and

C.D. & *E.F.* Defendant.

REPLY.

The Plaintiff as to the defence says he joins issue.

(Signed)

DELIVERED THE DAY OF 18 .
By PLAINTIFF'S SOLICITOR.

(20.) FORM OF AN ORDINARY ADMINISTRATION JUDGMENT, OR ORDER, CONTAINING THE MOST USUAL ACCOUNTS AND INQUIRIES IN AN ORDINARY ADMINISTRATION ACTION (*ante*, p. 174).

THIS COURT doth order that the following accounts and inquiry be taken and made; that is to say:

1. An account of the personal estate not specifically bequeathed of deceased, the testator in the pleadings named come to the hands of
2. An account of the testator's debt.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any) given by the testator's will.
5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed, be applied in payment of his debt and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

If real estate—

And it is ordered that the following further inquiries and account be made and taken; that is to say:

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.
7. An account of the rents and profit of the testator's real estate received by, &c.
8. An inquiry what incumbrances (if any) affect the testator's real estate or any and what parts thereof.

If sale directed—

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.

10. An inquiry what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the judge, &c.

And it is ordered that the further consideration of this cause be adjourned, and any of the parties are to be at liberty to apply as they may be advised.

(21.) FORM OF AFFIDAVIT AS TO CLAIMS (*ante* p. 175).18 . [*Here put letter and number.*]

IN THE HIGH COURT OF JUSTICE.
 Chancery Division.
 Mr. Justice

Between *A.B.* Plaintiff.
 and
C.D. Defendant.

We, *A.B.*, of, *dec.*, the above-named plaintiff [*or defendant, or as may be*], the executor [*or administrator*] of , late of , in the county of , deceased, and *E.F.*, of, *dec.*, solicitor, severally make oath and say as follows :

I, the said *E.F.*, for myself, say as follows :

1. I have in the paper writing now produced, and shown to me, and marked A., set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said *A.B.*, deceased, pursuant to the advertisement issued in that behalf, dated the day of 18 .

And I, the said *A.B.*, for myself, say as follows :

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked A., and I have compared the same with the books, accounts, and documents of the said *A.B.*, [*or as may be, and state any other inquiries or investigations made*], in order to ascertain, so far as I am able, to which of such claims the estate of the said *A.B.*, is justly liable.

3. From such examination [*and state any other reasons*] I am of opinion and verily believe, that the estate of the said *A.B.*, is justly liable to the amount set forth in the sixth column of the first part of the said paper writing, marked A., and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said *A.B.*, and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said *A.B.* is not justly liable to the claims set forth in the second part of the said paper writing, marked A., and that the same ought not to be allowed without proof by the respective claimants [*or, I am not able to state whether the estate of the said A.B., is justly liable to the claims set forth in the second part of the said paper writing, marked A., or whether such claims, or any parts thereof, are proper to be allowed without further evidence*].

5. Except as herein-before mentioned, there are not, to the best of my knowledge, information, and belief, any other claims against the estate of the said *A.B.*

Sworn, &c.

(22.) FORM OF AFFIDAVIT VERIFYING ACCOUNTS AND ANSWERING USUAL INQUIRIES AS TO REAL AND PERSONAL ESTATE (*ante*, p. 177).

18 . [*Here put the letter and number.*]

IN THE HIGH COURT OF JUSTICE.

Chancery Division.

Mr. Justice

In the matter of the estate
of *G. H.* Deceased.
Between *A. B.* Plaintiff
and
C. D. and *E. F.* Defendants.

We, *A. B.*, of *etc.*, *C. D.* of *etc.*, and *E. F.*, of *etc.*,
the above-named defendants, severally make oath and say as follows :

1. We have according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which *G. H.*, the testator in the judgment [*or order*] dated _____ made in this action [*or matter*] named, who died on the _____ day of _____, was possessed or entitled at the time of his death, and not by him specifically bequeathed.

2. Save what is set forth in the said Schedule I., and what is by the said testator specifically bequeathed, the said testator was not to the best of our knowledge, information, or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever.

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered _____ and _____ in the account herein-after referred to [*or if not paid it should be so stated with the amount due and to whom due*].

4. We have in the account marked A., now produced and shewn to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, not by him specifically bequeathed, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid.

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for

our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement allowance, or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have, according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto, the particulars of all the real estate which the said *G.H.* was seized of or entitled to at the date of his death.

9. Save what is set forth in the said Schedule, the said testator was not to the best of our knowledge, information, or belief, at the time of his death seized of or entitled to any real estate whatsoever.

10. We have, according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have in the account marked B., now produced and shewn to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disbursements, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made.

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

The FIRST SCHEDULE above referred to.

1. £50 cash in the house.
2. £100 cash at the testator's bankers, Messrs. *A. and B.*
3. £1,000 Consolidated £3 per cent. annuities, standing in the testator's name.
4. £10 due from John James, for half year's rent of house at _____, to Michaelmas, 1882.
5. £32 6s. 8d. balance remaining due from John Thomas on account of half year's rent of farm at _____, to Michaelmas, 1882.
6. £300, a debt due from Samuel Jones on a bond, with interest from _____, at _____ per cent.
7. A leasehold house situate at _____, held under a lease for a term of _____, which will expire on _____, at a rent of £ _____ a year, underlet to James Evans for a term which will expire on _____, at a rent of £50 a year.
8. £25, half a year's rent due from the said James Evans to _____.

The SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

The THIRD SCHEDULE above referred to.]

[To contain a short particular of the real estate.]

The FOURTH SCHEDULE above referred to.

[To contain a short particular of the incumbrances, and shewing what part of the above real estate is subject to each.]

INDEX.

A.

ABATEMENT,

- No abatement now by reason of death, &c., 39, 40
- Pleas in, abolished, 75
- What pleas in abatement were, 75

ACCOUNTS,

- Of personal representatives, 175
 - " " affidavit verifying, 177, and *see*
form of affidavit by personal
representative verifying, Ap-
pendix II., 262
 - " " vouching, 178
- Surcharging and falsifying, 178
- Additional accounts and inquiries may be directed, 180, 181
- Accounts and inquiries, interlocutory, 187
- Ordinary accounts and inquiries directed in an administra-
tion suit, Appendix II., 260
- Obtaining under Order xv., 187, 188
- Delay in prosecuting, 195
- Definition of, 45
- Notice before, where necessary, 43
- Different claims in, 41

ACTION,

- Removing from District Registry, 103, 104
- Friendly, 169
- Administration, proceedings in Chambers, 174-181

ADJUDICATING,

- On claims, 175, 176
- No person except executor or administrator to attend on
claim unless directed, 176, 177
- Form of affidavit as to, Appendix II., 261.

ADMINISTRATION,

- General proceedings in Chambers in action for, 174-181
- Course where two actions commenced for administering same estate, 196
- Application for payment of income or *corpus* during action for, 197
- Originating summons for, under 15 & 16 Vict. c. 86, 217
- Originating summons for, under Rules of 1883, 218-220

ADMINISTRATORS,

- May represent estate without beneficiaries being joined, 86

ADMIRALTY,

- Court of, consolidated into Supreme Court, 12
- Appeals, 238

ADMISSIONS,

- Notice of admission of facts may be given, 82
- Also notice to opponent to admit facts, 82, 83, 119
- Effect of such notice, 83
- Applying for order on, 83

ADVERTISEMENTS.

- For creditors, 174, 175
- For next of kin, 175

AFFIDAVITS: See EVIDENCE

- In answer to interrogatories, 95
- Course where parties agree to take evidence by, 163, 164
- Cross-examination on, 164
- Consent as to taking evidence by affidavit by person under disability, 165
- Parts of and rules as to framing, 165
- Sufficient title to, 165, note (f)
- Before whom may be sworn, 166
- Scandalous matter in, 166
- Illiterate or blind deponent, 166
- Solicitor cannot swear his own client to, 166
- Reading affidavit filed in another action, 167
- Used at trial may be used afterwards, 167
- Form of affidavit of documents, Appendix II., 253
- Evidence on interlocutory applications to be by, 187
- On payment of trust moneys into Court, 210
- Form of affidavit by personal representatives on accounts and inquiries, Appendix II., 262

AMENDMENT,

- By adding new defendants, 35
- Of writ of summons, 53
- Instead of new assignment, 75
- Of pleadings, 80
- Time to amend, 80
- When may be made without leave, 81
- How made, 81
- Pleading to amendment, 81
- On appeal, 178

ANSWER,

- A former pleading, 6

APPEAL,

- From Common Law Courts, 3
- Constitution of Court of, 19, 20
- Judges of, 19, 20
- Jurisdiction of Court of, 20
- Jurisdiction of House of Lords, 31-33
- From Master in Chambers, 111
- From Judge in Chambers, 111, 112
- Time for, 227
 - „ when calculated from, 227, 228
- Mode of, 228
- Notice of, 228
- Setting down, 228
- Security on, 229
- Cross appeal, 229
- Evidence on, 230
- Receiving new evidence, 230
- Amendment on, 231
- Costs on, 231
- Directing new trial on hearing of appeal, 231
- Hearing of appeal generally, 231
- Incidental directions on, 232
- Does not stay execution, 232
- Interest allowed for delay occasioned by, 232
- Any application that can be made to Court appealed from or to Court of Appeal, to be made to former, 232, 233
- From decision of Chancery Judge in Chambers direct to Court of Appeal, 233

APPEAL—continued.

- What orders not subject to, 233
- To House of Lords, 182–184 : *See* HOUSE OF LORDS.
- From inferior Courts generally, 238
- From County Courts, 238–240

APPEARANCE,

- Time for, 54
- What it is and how entered, 54, 55
- Notice of and service of sealed duplicate memorandum, 55
- Party entering in person may afterwards employ a solicitor, 55
- By partners, 56
- By person not named in writ in action for recovery of land, 56
- Limiting defence in appearance in action for recovery of land, 56
- Things a defendant may do before, 56
- Default of, 59–63, 161 : *See* DEFAULT.
- Where no defence, judgment may be obtained notwithstanding appearance, 63–65

ARBITRATION,

- Provision of Common Law Procedure Act, 1854, as to compulsory arbitration, 150
- Points of law arising on, 151
- Distinction between and reference to referee, 151
- Time for making award on compulsory reference, 151
- Setting aside award on compulsory reference, 152
- Enforcing same, 152
- Voluntary submission to arbitration must be made a Rule of Court, 152
- Appointment of arbitrator, umpire, &c., where not named in reference, 153
- Revocation of submission, 153, note (a)
- Failure to appoint arbitrator, 153, 154
- Mode of conducting reference, 154
- Time for making award, 154
- Questions of law arising, 154
- Appointment of umpire, &c., 154, 155
- Costs of arbitration, 155
- Making and publishing award, 155
- Grounds for setting aside award, 155, 156

ARBITRATION—continued.

- Time for moving to set aside award, 156
- Mode of procedure to set it aside, 156
- Enforcing award made on submission, 156, 157
- Taxing costs on award, 157

ARREST,

- Of defendant in an action, 102, 103
- Security in such a case, 103

ASSESSORS,

- Generally as to, 30
- Trial before Judge with, 116, 117

ASSIZES,

- Generally as to, 22

ASSOCIATES,

- Duties of, 24
- Provision of, 42 & 43 Vict. c. 76, as to, 29

ATTACHMENT,

- For not obeying order for discovery, 98
- Of debts, procedure as to, 136, 137
- Writ of, 139
- Procedure when against coroner or sheriff, 139, note (*m*)
- For contempt of court, 201

ATTORNEY-GENERAL,

- When action commenced in name of, 43

AWARD : See ARBITRATION.**B.****BAIL,**

- Holding defendant to in a civil action, 102, 103

BANKING COMPANIES,

- How they sue and are sued, 42

BANKRUPTCY,

- Provisions of Bankruptcy Act, 1883, uniting Court of, with Supreme Court, see Preface, p. vi.
- Effect of during the action, 39, 40
- Trustee suing cannot join other claims except by leave, 41
- Trustee continuing bankrupt's action must give security for costs, 106, 107

- BEGIN,
 Right to at trial, 125
- BILL OF COMPLAINT, 6
- BILL OF EXCEPTIONS, abolished, 233
- BILLS OF EXCHANGE,
 Former proceedings under Bills of Exchange Act, 57
 Advantages of the Act, 57, 58
 No writs can now be issued under this Act, 57, 58
- BLIND DEPONENT,
 How sworn to affidavit, 166
- BOND,
 Action for penalty on, 62
- BREACH OF PROMISE OF MARRIAGE,
 Right to a jury in action for, 115
- BRIEF,
 What it should contain, 119, 120

C.

- CAPIAS AD SATISFACIENDUM,
 Writ of, 135
 Provision of Debtors Act, 1869, affecting, 135
- CASE: *See* SPECIAL CASE.
- CAUSE, SHORT,
 Practice on, 169
 Hearing on further consideration may be so, 199
- CAUSES OF ACTION,
 Rule as to uniting several in one writ, 41
- CERTIFICATE: *See* CHIEF CLERK.
 Of fund in Court, 193
- CHAMBERS: *See* JUDGES' CHAMBERS.
 Appeals from decisions in, 111
- CHANCERY,
 Origin of Court of, 3
 Former Judges of, 3, 4

CHANCERY—continued.

- Former practice in court of, 6
- Court of, consolidated into Supreme Court, 12
- Matters assigned to exclusive jurisdiction of Chancery Division, 15, 16
- Different modes of commencing proceedings in, 160
- Assignment to particular Judge in, 160,
- Party suing in representative capacity in, 161
- Effect of non-appearance to writ in, 161
- Default in delivering statement of defence in, 162
- Trial in, 163
- Evidence on hearing in, 163, 164
- Drawing up of judgment in, 168
- Friendly actions, 168
- Short cause, 169, 170
- Proceedings in chambers under judgment in, 171–182
- Sales under order of, 181, 182
- Summons, proceedings on, 185, 186
- Taxation of costs in, 203–205

CHANGE OF SOLICITORS,

- How effected, 50

CHARGING ORDER ON STOCK, 137, 138**CHARITABLE TRUSTS ACT, 1852**

- Rule as to appeal, 233

CHIEF CLERK,

- Duties of, 24, 25
- Powers of, 25, 26
- Proceedings before in working out accounts and inquiries under a judgment, 171–182
- Directions by, 174
- „ „ carrying out of, 175–178
- Certificate of, 8, 179
- Taking opinion of Judge on points arising before, 179
- Application to vary certificate of, 180
- When certificate of, binding, 180

CHOSE IN ACTION,

- Course to be taken when assigned and dispute arises as to, 211

CIRCUITS,

Generally as to, 22

CLAIM : *See* ADJUDICATING.

Statement of : *See* PLEADINGS.

COMMENCING PROCEEDINGS,

Modes of, 45, 160

COMMITMENT,

Master no power to make order of, 23, note (a)

Order of, under Debtors Act, 1869, only in force for one year, but may be renewed, 135

COMMON LAW,

Origin of Courts of, 1, 2

Former Judges at, 3

Former practice in Courts of, 5, 6

Powers of, given to Courts of Equity before Judicature Acts, 9, 10

COMMON PLEAS,

Court of, Consolidated into Supreme Court, 12

COMPANIES,

How to sue and defend, 42

How served with writ of summons, 49

When defendants, to whom interrogatories may be administered, 94

Winding-up of, 214, 215

Official liquidator, 214, 215.

Appeal against winding-up order, time for, 227

COMPOUNDING,

Penal action, 113

CONDITION,

Judgment on order granted upon, 130

CONDUCT OF CAUSE,

Summons for, 195

Where two actions commenced for administration of an estate, 196

CONSENT,

To judgment, 65

For time to deliver pleadings, 89

To take evidence by affidavit, 163-165

Orders by, not subject to appeal, 223

- CONSOLIDATION OF ACTIONS, 36, 37
 - Costs in consolidated actions, 93
- CONSTABLE,
 - Action against, 43, 44
- CONTEMPT OF COURT,
 - By reason of disobedience to order for discovery, 98
 - Attachment is the remedy for, 139
 - Generally as to, 201
- CONTRIBUTION,
 - From third parties, provisions as to, 38, 39
- CONVEYANCING COUNSEL,
 - Duties of, 28
- CORONER,
 - Attachment against sheriff is directed to, 139, note (*m*)
 - Attachment against coroner is directed to elisors (*ib.*)
- CORPORATIONS,
 - How to sue and defend, 42
 - How served with writ of summons, 48
- COSTS,
 - Some general rules as to, 27, 28
 - Must be indorsed on specially indorsed writ, 46
 - Of taxation, 47
 - Allowed on judgment under Order xiv., 65, and Appendix II., 250
 - Of facts which ought to have been admitted, 74
 - Security for, when it can be obtained, 105-107
 - How security given, time, &c., 107
 - In the cause, 111
 - In any event, 111
 - On interlocutory application a lump sum may be ordered for, instead of taxation, 111
 - Judgment for, after discontinuance, 113
 - Fees and refreshers to counsel, 121
 - Of the day, 126
 - Sequestration to enforce payment of, not now issued, without leave, 139
 - Provisions of Judicature Act as to, 143
 - Under County Court Act, 1867, as amended, 143

Costs—continued.

- Special provision now where not more than £50 recovered on contract, 144
- Statement of position as to now, 144, 145
- On set-offs and counter-claims, 145
- Depriving successful party of, 146
- Taxation of, 146, 147, 202–205
- Rules as to higher and lower scale, 147
- In matters pending on October 24, 1883, 147
- Party and party, and solicitor and client, 148
- Delivery of solicitor's bill and taxation by client, 148
- Disallowance to a solicitor of, in certain cases, 149
- On petitions, 184
- Of arbitration, 155, 157
- In Chancery Division on further consideration, 202
- On paying trust moneys into Court, 212
- On appeal, 231
- Orders as to, only, not subject to appeal, 233
- Security for, on appeal to House of Lords, 236
- Forms of costs on judgment under Order xiv., Appendix II., 250

COUNSEL,

- Fees and refreshers to, 121
- Fees to clerks of, 121
- Vouching fees of, 121

COUNTER-CLAIM,

- Has same effect as statement of claim in cross action, 74
- May be continued, though plaintiff's action stayed, 74
- Pleading to, 77–80
- When it may be amended without leave, 81
- Costs when defendant succeeds on, 145

COUNTERMAND,

- Of notice of trial, 117

COUNTY COURT,

- Reference to, in actions of contract, 100, 101
- Ordering action to be tried in, 101
- Transfer to, in actions of tort, 106
- Cases in which it has no jurisdiction, 145
- Equitable jurisdiction of, 205
- Appeals from, 238–240
- No appeal from, when agreed decision of Judge of, shall be final, 240

- COURSE,
 - Orders of, 187
- COURT,
 - Inconvenience of different Courts, 4
 - Of appeal, 19, 20
 - Officers of, besides Judges, 22-28
- CREDITORS: *See* ADJUDICATING.
 - Advertisement for, 174
- CROSS EXAMINATION,
 - At trial, 124, 125
 - Disallowing questions in, 125, 126
 - On affidavits, 164
- CROWN OFFICE,
 - Now part of the Central Office, 29
- CUSTODY,
 - How evidence of witnesses in obtained, 122

D.

- DAMAGES,
 - Date to which assessed, 60
 - Writ of inquiry for ascertaining, 61
- DAY,
 - Costs of, 126
- DEATH OF PARTIES,
 - Effect of, *pendente lite*, 39, 40
- DE BENE ESSE,
 - Taking evidence, 122, 123
- DECLARATION, 5
- DECLARATORY JUDGMENT,
 - Claim for allowed, 79
- DECREE,
 - Notice of motion for, 7, 8
 - Carrying out of, 7, 8
 - Enrolment of, 234

DEED,

Settling in Chambers where parties differ, 197

DEFAULT,

Of appearance in Queen's Bench Division, 59-63

„ in Chancery Division, 161

„ to writ for liquidated amount, 59

„ in actions for unliquidated damages, 60

„ of one of several defendants, 60

„ in actions for debt and damages, 61

„ in actions to recover land, 62

„ in actions for penalty on a bond, 62

„ in case of infants and lunatics, 63

Defendant let in to defend notwithstanding, 62, 63

Date of judgment by, 63

In delivery, of statement of claim, 72

„ of statement of defence, 75, 76, 162

„ of reply or subsequent pleading 77, 78

DEFENCE,

Statement of: *See* PLEADING.

Puis darrein continuance, 80

DEFENDANT,

Non-joinder of, 34

Interest need not be equal, 35

Contribution against third parties, 38, 39

Out of jurisdiction, leave to serve, 51, 52

May be let in to defend although judgment signed, 62, 63

May pay money into Court, 90, 91

Arrest of, 102, 103

When he may give notice of trial and enter cause for trial,
115, 117

Not appearing at trial, 127

DELIVERY,

Writ of delivery of property, 139

DEMAND,

For names of partners, 50

Whether writ issued by solicitor's authority, 50

DEMURRER,

Not now allowed, 78

Definition of, 78

DEMURRER—continued.

Instance of, 78

Course now allowed instead of, 79

DIRECTIONS,

Summons for, 113, 114; and *see* FORMS OF SUMMONS AND ORDER, Appendix II., 255, 256

For matters to be done in Chambers, 197

DISCONTINUANCE OF ACTION, 112, 113

Judgment for costs after, 112, 113

DISCOVERY: *See* DOCUMENTS; INTERROGATORIES.

Against lord of a manor, 222

Costs of, 98, 99

Security for by means of deposit in Court, 99

DISMISSING,

Action for want of prosecution, 102

DISPENSING,

With service of notice of judgment in Chancery Division, 173

DISTRIBUTION OF BUSINESS,

Amongst the different Divisions, 15, 16

DISTRICT REGISTRIES,

Establishment of, 17, 18

Power of District Registrars, 18

Entry of causes for trial in, 18

Signing judgment in, 18

Various matters which may take place in, 18

Appeals from District Registrar, 18, 19

Chancery matters in, 19

Time for business in, 19

Appearance in the case of writs from, 55

Judgment by default in, 60

Removal of action from, 103, 104

DISTRINGAS,

Former writ of, 223

Proceedings now in lieu of writ of, 223, 224

Effect of such proceedings, 224

DIVISIONS OF HIGH COURT,

Presidents of, 12, 13

Business how distributed amongst, 15, 16

DIVORCE,

Court of, consolidated into Supreme Court, 13

DOCUMENTS,

Discovery of, obtained by summons, 96

Inspection of, 96, 97

Summons for inspection, when possession of not admitted, 97

Order for discovery of not necessarily granted of course, 97, 98

Consequence of disobedience of order for discovery, 98

Form of affidavit of, Appendix, 253

Form of notice to produce, for inspection, Appendix II., 253

Form of notice of appointment to inspect, Appendix II., 254

Service of order for discovery of, 98

Costs of discovery of, 98

Deposit in Court necessary before issuing summons for discovery of, 99

Notice to produce at trial, 118, 119

Form of such notice, Appendix II., 257

Notice to inspect and admit, 119

Form of such notice, Appendix II., 257

Refusing to admit, 119

E.

EJECTMENT: *See* RECOVERY OF LAND.

ELEGIT,

Writ of, 135

Sale after, 135

Recovery back of lands by judgment debtor after judgment creditor satisfied by, 135, 136

Course instead of, where judgment debtor has only an equity of redemption, 136

ELISORS, 139, note (*m*)

ENFORCING JUDGMENT, 133-142, 201

ENQUIRIES: *See* ACCOUNTS.

ENQUIRY,

Writ of, 61

What it is, 61

Mode of procedure on it, 61, 62

ENROLMENT,

Of decree, or order now has no object, 234

ENTRY,

Of cause for trial, 117

EQUITABLE EXECUTION, 136**ERROR,**

Proceedings in, abolished, 233

EVIDENCE: See WITNESSES; AFFIDAVITS.

De bene esse, 122, 123

May be taken by affidavit, 163, 164

Procedure where taken by affidavit, 164

Cross-examination on affidavits, 164, 165

On interlocutory applications to be by affidavit, 187

Of funds in Court, 193

On appeal, 230

EXAMINERS,

Duties of, 26

Procedure before, 26, 27

EXCEPTIONS,

Bills of, abolished, 233

EXCHEQUER,

Court of, consolidated into Supreme Court, 12

EXECUTION,

How issued, 133

Time within which writ of must be executed, 134

How long in force, 134

Renewal, 134

Fieri facias, 134

Ca. sa., 135

Elegit, 135

Levari facias, 135, note (o)

Discovery in aid of, 136

Obtaining Sheriff's return to, 136

Attachment of debts, 136, 137

Charging stock, 137, 138

Enforcing judgment when not for land or money, 138

EXECUTION—continued.

- Writ for delivery, 139
- Writ of attachment, 139
- Sequestration, 139
- Writ of possession, 139, 140
- De bonis ecclesiasticis*, 140
- Sequestrari facias*, 140
- Against partnership firm, 140, 141
- Judgment must be produced on issuing, 141
- Appeal does not stay, 232

EXECUTORS

- May represent estate without beneficiaries being joined, 36
- What claims may be joined with claims as executors, 41
- Judgment against *quando acciderint*, 141
- To what extent his powers interfered with by an originating summons under Rules of 1883, 220

EXPERTS,

- Obtaining assistance of, 178

F.**FALSE IMPRISONMENT,**

- Right to a jury in action for, 115

FALSIFYING AND SURCHARGING, 178**FIERI FACIAS,**

- Writ of, 134
- De bonis ecclesiasticis*, 140

FOLIO,

- Comprises seventy-two words, 66, note (e)

FORMÂ PAUPERIS,

- Suing in, 43

FORMS: See APPENDIX II., 248-264**FOREIGNER,**

- Writ against, 51
- Security for costs, 105

FORMAL PARTY,

- When served with petition should be tendered £1 10s., 184

FRIENDLY ACTION,

May be heard short, 169

FUND IN COURT,

Certificate or transcript of, 193

FURTHER CONSIDERATION,

Setting down cause on, 198

No evidence received beyond Chief Clerk's certificate, 199

May be heard short, 199

Judgment on, 199, 200

When it may take place in Chambers, 200, 220

When cause cannot be finally disposed of on, 200

Enforcement of judgment on, 201, 202

Costs on, 202

FUSION,

Steps towards, before Judicature Acts, 9, 10

G.**GARNISHEE ORDER,**

Generally as to, 136, 137

A creditor under an order can obtain a garnishee order,
136, note (t)

Conflicting claims in proceedings for, 137

Wages Attachment Abolition Act, 137

GENERAL ISSUE PLEADED BY STATUTE, 73, 74**GUARDIAN AD LITEM, 42****GUARDIANSHIP AND MAINTENANCE,**

Summons for, 221

H.**HABEAS CORPUS AD TESTIFICANDUM, 122****HEARING OF CAUSE: See TRIAL**

In Chancery Division, 162, 163, 167

Short, 169

HIGH COURT OF JUSTICE,

How constituted, 12, 13

Order in Council as to, 13, 14

Jurisdiction of, 14

Distribution of business in, 15

HIGHER AND LOWER SCALE OF COSTS, 147

HOLIDAYS, 21, 22, 31**HOUSE OF LORDS,**

- Origin of jurisdiction as a Court of Appeal, 31, 32
- How now constituted, 32, 33
- Mode of appeal to, 235
- Presentation of appeal to, 235
- Security on appeal to, 236
- Printed cases, 236
- Cross appeals, 237
- Setting down and disposal of appeal, 237

HUNDRED,

- Service of writ against inhabitants of a, 48

HUSBAND AND WIFE : See MARRIED WOMEN

- Claims by or against may be joined with separate claims, 41
- If parties, must both be served with writ unless otherwise ordered, 48

I.**IDENTIFICATION,**

- Of client on receiving money out of Court, 202

ILLITERATE DEPONENT,

- How sworn to affidavit, 166

INCOME,

- Application for payment of, during progress of Chancery proceedings, 197

INDORSEMENTS,

- On writ of summons, 46, 47
- Special, 47

INFANTS,

- How to sue and defend, 42
- Service on, 48
- Plaintiff may apply for guardian to be appointed to defend if infant does not appear, 63
- Protection to, in respect of money recovered, 129
- Consent by, to take evidence by affidavit, 165
- How served with notice of judgment, 172
- Ward of Court, application to marry, 196
- Appearance of, on petitions and summonses, 221
- Marriage settlement of, 221, 222

INFANTS—*continued*.

Summons under Infants' Settlement Act and affidavit in support thereof, 221, 222

INFERIOR COURT: *See* COUNTY COURT

Judgment of, may be removed to a higher Court for purposes of execution, 142

Appeals from, 238-240

INJUNCTION,

Power of Court of granting, 190

No writ now issued, 191

Enforcing, 191

Ex parte, 191

INQUIRIES: *See* ACCOUNTS.

INQUIRY, WRIT OF,

What it is, 61

Mode of procedure on it, 61, 62

INSPECTION OF DOCUMENTS,

During action, 96, 97

Under notice to inspect and admit, 119

INTEREST,

Course that may be taken where there are several parties having the same interest, 36, 172

Allowed for delay occasioned by appeal, 232

On legacies, 179, 180

INTERLOCUTORY PROCEEDINGS, 85-114, 183-197

Costs on, 111

INTERPLEADER,

Cases in which it arises, 107

Jurisdiction of the Masters in, 107, note (b)

Not necessary that titles should have had common origin, 108

When summons should be taken out, 108

Affidavit in support of, 108

Generally as to, 108, 109

Sale of goods on, 109

No appeal in, except by special leave, 233

INTERROGATORIES,

- Before Judicature Act, 6
- Definition of, 94
- Cases in which allowed without special leave and time for, 94
- Where defendant is a public company, 94
- Striking out or disallowing, 94, 95
- Course when objected to, 95
- How and when answered, 95
- Answers to, how used, 96
- Course to compel answer to, 95, 96
- Service of order for interrogatories to be answered, 98
- To sheriff's officer, 98
- Costs of, 98, 99
- Deposit in Court necessary before delivery, 99

INVESTMENT,

- Of cash in Court, 193

IRELAND,

- Suing defendant in, 52

IRRELEVANT MATTER,

- In interrogatories, 95

ISSUES OF FACT WITHOUT PLEADINGS, 111**J.****JOINDER OF ISSUE,**

- In pleadings, 77

JOINING,

- Several causes of action in one writ, 41

JOINT STOCK COMPANIES,

- How they sue and are sued, 42
- How served with writ, 49

JOINT STOCK COMPANY,

- Security for costs in action by, 107

JUDGES,

- Of High Court of Justice, 13
- How appointed and how they hold their offices, 13

JUDGES—continued.

- Order in Council as to the, 13, 14
- Of appeal, 20
- Trial by a judge alone without a jury, 116

JUDGES' CHAMBERS,

- Appeals from decisions in, 111
- Proceedings in, in Chancery, 171-182
- Direction for matters to be done in, 197

JUDGMENT,

- Final, 59
- Interlocutory, 59, 60
- When judgment by default can be signed in District Registry, 60
- Date to which damages to be assessed on, 60
- In action to recover land, 62
- Defendant may sometimes be let in to defend after judgment, 62
- By default, how dated, 63
- Plaintiff may apply for final judgment after appearance under Order xiv. where writ specially indorsed, 63-65
- Formalities attending consent to, 65
- Definition of, 127
- Mode of obtaining, 128
- Motion for, 128-162
- Time for setting cause down on motion for a judgment, 128
- Course to be taken when party objects to judgment directed to be entered, 128, 129
- Clerical mistakes in, 129
- Protection to infants recovering, 129
- Obtaining after trial of issues, 130
- Power of Court on motion for, 130
- On some condition, 130
- Entry of, 130
- How enforced, 133-141
- As to service of, 133, and note (a) on that page
- Quando acciderint*, 141
- Of inferior Court may be removed to High Court, for purposes of execution, 142
- Drawing up of, in Chancery, 168
- Carrying judgment into Chambers in Chancery Division, 171

JUDGMENT—continued.

Notice of, 171–173

Judgment for accounts, &c., can be obtained under Order
xv., 188, 189

On further consideration, 200

Enforcement of, in Chancery, 201

JURISDICTION,

Vested in the High Court, 14

Service out of, 51, 52

Evidence of witnesses out of the, 122

Of County Court, 145, 205

JURY,

Case in which parties have a right to, 115, 116

Summons for, in other cases, 116

Who are liable to serve on, 123; note (s)

Qualifications of juror, 123; note (t)

Special jurors, 123; note (u)

How special jury obtained, 123

Expenses of, 124

Order for view by, 124

Not agreeing on verdict, 126

Withdrawing a juror, 126

Misbehaviour of, ground for a new trial, 131

Mode of disposal of jury cases in Chancery Division, 163

L.

LAND: See RECOVERY OF LAND.

LANDS CLAUSES ACT,

Proceedings under, 208, 209

LAW AND EQUITY,

Differences between, 4–7

Inconveniences of the two systems, 4

LEASES AND SALES OF SETTLED ESTATE ACT,

Petition under, 213, 214

LEAVE,

For service out of jurisdiction, 51, 52

To appear to writ under Bills of Exchange Act, 57, 58

LEGACIES,

Certifying and interest thereon, 179

When paid in under the Legacy Duty Act, 207

Ex parte application for payment out of Court, 207, 208

LEVARI FACIAS, 135 ; note (o)

LIBEL AND SLANDER,

Right to a jury in action for, 115

Seven days' notice necessary in action for, of intention to give certain evidence in mitigation of damages, 125

LIEN,

Limiting several causes of action, 41

Paying money into Court where claimed, 193

LIMITED COMPANY,

Security for costs in action by, 107

LORD OF A MANOR,

Discovery against, 222

LORDS : *See* HOUSE OF LORDS.

Lower and higher scale of costs, 147

LUNATIC,

How to sue and defend, 42

How served with writ of summons, 48

Plaintiff may apply for guardian to defend, if no appearance entered for, 63

Protection to, in respect of money recovered, 129

Consent by, to take evidence by affidavit, 165

M.

MAINTENANCE,

Summons for, 221

MALICIOUS PROSECUTION,

Right to a jury in action for, 115

MANDAMUS, 191, 192

MARRIAGE,

Effect of, during the action, 39

Application for leave for marriage of ward of Chancery, 196

Application under 18 & 19 Vict. c. 43, 221, 222

MARRIED WOMEN,

How to sue and defend, 42

Service on, 48

MASTERS,

Duties of, 23

Cases in which they have no jurisdiction, 23; note (a)

Arrangement as to assignment of action to Masters, 23, 24

Referring action to one of the, 100

MEMORANDUM,

To be endorsed on certain judgments and orders on service, 138, 139

MERCHANDISE MARKS ACT,

Security for costs in action under, 107

MESNE PROFITS,

May be joined with action for recovery of land, 41

What are, 62; note (k)

MISJOINDER OF PARTIES,

Effect of, 35

MONEY : See PAYMENT INTO COURT.

In Court, 91, 93, 192, 193, 201

MONTH,

Means a calendar month, 112

MONTH'S NOTICE OF PROCEEDING,

When necessary, 112

MOTION,

Applications by, 85

Notice of necessary, 85

Ex parte, 86, 184

Serving notice of with writ, 86

Date of order on, 86

When application to be by, 185

As a mode of originating proceedings, 215, 216

Appeal by, from County Court, 239, 240

MOTION FOR JUDGMENT : See JUDGMENT.

When necessary in Common Law Division, 128

Time for setting down action on, 128

Generally as to, 128

Power of Court on, 130

When this course taken in Chancery Division, 162, 163

N.

NE EXEAT REGNO, 193, 194

Limitation of writ of, by case of *Drover v. Beyer*, 194

NEGLECT,

To attend appointments in Chambers, 181

NEW ASSIGNMENT,

Abolished, 75

What it was, 75

NEW TRIAL,

Grounds for, 131

Application for, to whom made, and within what time, 131,
132

No motion for rule nisi for, but notice of motion stating
grounds to be given, 132

NEXT FRIEND, 42

NISI,

Rules nisi not allowed, 85

NON-APPEARANCE : *See* APPEARANCE.

NON-JOINDER OF PARTIES, 34

NONSUIT,

Explanation as to, 126

Effect of, 126, 127

NOTICE,

Of motion for decree, 6

Of action by defendant to third parties, 38, 39

Before action when necessary, 43, 44

Of appearance, 55

To admit facts, 82, 83, 119

To produce documents for inspection during action, 96, 97,
and see Form in Appendix II. 253

Of application under such notice, and see Form in Appendix
II. 254

One month's notice necessary when there has been no
proceeding for a year, 112

Of trial, 115, and see Form in Appendix II. 256

To produce, 118

Form of notice to produce, Appendix II. 257

To inspect and admit, 119

Form of notice to inspect and admit, Appendix II. 257

NOTICE—continued.

- Of judgment, 171, 173
- How notice of judgment served on infant, &c., 172
- Of appeal, 228
- Of cross appeal not necessary, 229

O.

OFFICERS OF THE COURT,
Generally as to, 22-31

OFFICIAL LIQUIDATOR : *See* COMPANIES.

OFFICIAL REFEREE : *See* REFEREE.

OPINION OF COURT,
Petition or summons for, 213

ORDER XIV.,
Provision of, 64, 65
Form of costs on judgment under, Appendix II. 250

ORDER XV.,
Provision of, 189, 190

ORDERS,
How enforced, 141
Drawing up of, in Chancery, 168, 186
Of course, 187
What not subject to appeal, 233

P.

PARTICULARS,
Where necessary to be stated in or delivered with pleadings, 69, 70
Summons for, 99
Instance of summons for, 100
Time for pleading when particulars ordered, 100

PARTIES,
Non-joinder or misjoinder of, 34, 35
Substitution of plaintiff, 35
Interest of defendants, 35
Counter-claim in case of misjoinder, 36
Representation by trustees, 36
Several with same interest, 36

PARTIES—continued.

- Consolidation, 36
- Joining parties in consequence of defence, 37
- Contribution against person not a party, 38, 59
- Death of interested, 39, 40
- Proceeding without personal representative of deceased party, 40

PARTNERS,

- How sued, 49
- Service on, 49, 50
- Demand of names of, 50
- Appearance by, 56
- Execution against, 140, 141

PARTY AND PARTY COSTS,

- Difference between, and solicitor and client, 148

PAUPER,

- Plaintiff in action of tort unable to pay costs, order may be made for security or transfer to County Court, 106

PAYMASTER-GENERAL : See PAYMENT INTO COURT.

- Duties of, 26
- Money under control of, 192, 193, 201, 202

PAYMENT INTO COURT,

- Old practice, prior to Judicature Acts, 90
- New practice, 91
- Rules as to obtaining money out of Court, and position when paid in, and liability denied, 91–93
- May be made by plaintiff in respect of counter-claim, 93
- Appropriation of money paid into Court under Order xiv.; summons, 93, 94
- In Chancery Division, 192, 193
- Certificate of fund or transcript of account may be obtained, 193
- Obtaining money out of Court, 201, 202
- Under Legacy Duty Act, 207
- Under Lands Clauses Act, 208
- By trustee, 210

PERPETUATING TESTIMONY,

- Action for, 170

PEDIGREE,

Proceedings in matters of, 177

PENALTY,

On a bond claim for, 62

Compounding action of a penal nature, 113

PETITION,

Definition of, 183

Lodging, 183

Service of, 183

Costs on and tender of £1 10s. in certain cases, 184

When application to be by, 185

As a mode of commencing proceedings, 206, 207

Under Legacy Duty Act, 207, 208

Under Lands Clauses Act, 208, 209

Under Trustee Relief Act, 210–212

For appointing new trustees, 212

For opinion of Court, 213

Under Leases and Sales of Settled Estates Act, 213, 214

For winding up company, 214

PLEA, 5**PLEADINGS: (*See also* Precedents of Pleadings in Appendix II.)**

Before Judicature Acts, 5, 6

Object of, 66

General rules as to, 66–70

Times for service of, 67

Denying facts specifically, 67, 68

Claim for general relief not necessary in, 68

Instances of shortening, 68, 69

When particulars must be stated in or delivered with,
69, 70

Signature to, 70

Rules regulating the delivery of statement of claim,
70, 71

Consequences of not delivering statement of claim, within
proper time when necessary, 72

Statement of claim may differ from indorsement on writ,
72

Statement of defence, 72–76

Time for delivery of statement of defence, 72

General points to be observed in defence, 73

PLEADINGS—continued.

- Pleading general issue by statute, 73, 74
- Set-off and counter-claim may be set up in statement of defence, 74
- Pleas in abatement and new assignment, 75
- Consequences of not delivering statement of defence within time limited, 75, 76
- Reply, 77, 78
- Pleadings subsequent to reply, 77, 78
- Close of, 77
- Joinder of issue, 77, 78
- Default in delivery of reply or subsequent pleading, 77, 78
- Rejoinder, 77
- Demurrer not now allowed, and course instead of, 78, 79
- Striking out pleading, 79
- Claim in, for declaratory judgment only, 79
- Amendment of, 80
- Scandalous or embarrassing matter, 80, 81
- Pleading to amendments, 82
- Peculiarity in statement of defence in action for recovery of land, 84
- Defence arising after action commenced, 79, 80

PLENE ADMINISTRAVIT,

- Plea of, 141

POSSESSION,

- Writ of, 139

POSTPONEMENT,

- Of trial, 126

PRESERVATION OF PROPERTY,

- Interim order for, 189, 190

PRINTING,

- Of pleadings, 66
- Of money orders, 168

PRISONER,

- How evidence of, obtained, 122

PRIVILEGE,

- When claimed in affidavit of documents, 96

PROBATE,

Court of, consolidated into Supreme Court, 13

In probate matters writs cannot issue from District Registry, 45

PROCEED,

Summons to, 174

PRODUCE, NOTICE TO,

At trial, 118, 119

For inspection during action, 96, 97, and see Form in Appendix II. 253

Form of, Appendix II. 257

PROSECUTION OF ACTION,

Cases of applications for action to be dismissed for want of prosecution, 102

PUBLIC MATTERS,

How proceedings taken in respect of, 43

PUIS DARREIN CONTINUANCE,

Plea of, 80

Q.**QUANDO ACCIDERINT,**

Judgment of, 141

How execution afterwards obtained under such a judgment, 141, 142

QUEEN'S BENCH,

Court of, consolidated into Supreme Court, 12

QUERIES ON ACCOUNTS,

How disposed of, 178

R.**RAILWAY COMPANIES,**

How they sue and are sued, 42

How served with writ, 49

REBUTTER, 5**RECEIVER,**

Application for, in the shape of equitable execution, 136

Generally as to appointment of, 188, 189

Security given by on appointment, 188

Power to appoint under the Judicature Acts, 189

RECORD AND WRIT CLERKS,

Duties of, 26

Provision of 42 & 43 Vict. c. 76, and Rules of 1883 as to, 29, 30

RECOVERY OF LAND,

- With claim for, what other claim may be joined, 41
- Writ may be specially indorsed in action for, 47
- Service of writ for, in case of vacant possession, 50
- Appearance in action for, by person not named in writ, 56
- Appearance in action for, may limit defence as to part only, 56
- Non-appearance in action for, 62
- Default in delivering statement of defence in action for, 76
- Peculiarity in statement of defence in action for, 84

REFEREES,

- Powers of, 30, 31
- Times of sittings of, 31
- Disposal of question of law arising before, 31
- Referring matters to, 100
- Trial before, 116, 117

REFERENCE : *See* ARBITRATION.

- Summons for, 100
- To County Court, 100, 101

REGISTRARS,

- Duties of, 26

REJOINDER, 5**RELATOR,**

- Explanation as to, 43

RELIEF,

- Difference between Law and Equity, 4
- Of trustees, 210, 211

REMOVAL,

- Of actions to County Courts, 100, 101,
- Of action from District Registry, 103, 104

REPLEVIN, 58, note (t)**REPLICATION, 5****REPLY: *See* PLEADINGS.****REQUISITIONS ON TITLE,**

- May be summarily disposed of in Chambers, 223

RESTRAINING ORDER,

On Stock, 225

REVIEWING TAXATION OF COSTS, 204, 205

RULES,

Nisi and absolute, 85

Notice of motion for rule now necessary, 85

Side bar rules, 156

S.

SCANDAL,

Objections to interrogatories as partaking of, 95

Matter in affidavit in the nature of, 166

SCIRE FACIAS, 142, note (b)

SALE,

In Chancery Division, 181, 182

SCOTLAND,

Suing defendant in, 52

SEARCH,

To ascertain state of proceedings, 195

SECURITY,

For costs when it can be obtained, 105-107

For discovery, 99

On order for arrest, 103

On an appeal in certain cases, 229

SEDUCTION,

Right to a jury in action for, 115

SERVICE,

Of writ of summons, 48, 49

„ „ out of jurisdiction, 51, 52

When it may be effected, 52, 53

Time for service of pleadings, summonses, rules, notices,
&c., 67

Of order for discovery, 98

Of judgment, 133, and note (a)

Of petition, 161

Of notice of judgment in Chancery Division, 171-173

Of notice of appeal, 176

SEQUESTRARI FACIAS, 140

SEQUESTRATION,

Writ of, 139

SET-OFF,

Now allowed in all cases, 74

Alterations in previous rules, as to, 74, 75

Amendment of, without leave, 81

Costs on, 145

SETTLED LAND ACT, 1882,

Summonses under, 222, 223

SHERIFF,

Duties of, 24

Interpleader by, 107, 108

Attachment against is directed to coroner, 139, note (m)

SHORT CAUSE, 169

SIDE BAR RULES, 156

SIGNATURE OF PLEADINGS, 70

SITTINGS,

Of Court of Appeal, 21

Of High Court in London and Middlesex, 21

SOLICITOR: *See* COSTS; TAXATION.

Officer of the Court, 30

Demand on, whether writ issued with his authority, 50

Service of order for discovery on, and liability of in respect thereof, 98

Delivery of bill, 148

Disallowance to, of costs in certain cases, 149

Cannot swear his own client to affidavit, 166

Neglecting to attend appointments, 181

SOLICITOR AND CLIENT COSTS,

Difference between, and party and party, 148

SPECIAL CASE,

When resorted to under the Judicature Acts, 109, 110

Consent by parties under disability, 110

Agreement as to, 110

Commencing proceedings by, 223

Appeal by, from County Court, 239

SPECIAL INDORSEMENT: *See* WRIT OF SUMMONS.

SPECIAL JURY,

How obtained, 123

Costs of, 124

STOCK,

Charging order on, 137, 138

Distringas proceedings, 223-225

Restraining order on, 225

STAMP DUTY,

On vesting order, 212

None on agreement that there shall be no appeal from
County Court, 240

STATEMENT OF CLAIM: *See* PLEADINGS.

STATEMENT OF DEFENCE: *See* PLEADINGS.

STATEMENT OF REPLY: *See* PLEADINGS.

STATUTE,

Pleading general issue by, 73, 74

STATUTES,

8 & 9 Will. 3, c. 11 (*Action for Penalty*), 62, 91

36 Geo. 3, c. 52 (*Legacy Duty*), 207

1 Will. 4, c. 7, s. 1 (*Writ of Inquiry*), 61

1 & 2 Will. 4, c. 58 (*Interpleader*), 107

3 and 4 Will. 4, c. 42 (*Action for Penalty*), 62

1 & 2 Vict. c. 45 (*Interpleader*), 107

1 & 2 Vict. c. 110 (*Judgments*), 138

5 & 6 Vict. c. 5 (*Distringas and Restraining Orders*), 223-
225

6 Vict. c. 18, s. 60 (*Appeals from Revising Barristers*), 2

6 & 7 Vict. c. 73 (*Attorneys and Solicitors*), 148, 149

6 & 7 Vict. c. 96 (*Libel*), 90

8 & 9 Vict. c. 16, s. 132 (*Companies Clauses Consolidation*),
49

8 & 9 Vict. c. 18 (*Lands Clauses Consolidation*), 208, 209

9 & 10 Vict. c. 95 (*County Courts*), 145

10 & 11 Vict. c. 96 (*Trustee Relief Act*), 210, 211

12 & 13 Vict. c. 74 (*Amending Trustee Relief Act*),
210, 211

13 & 14 Vict. c. 35, 206, note (e), 223

STATUTES—continued.

- 13 & 14 Vict. c. 60 (*Trustees*), 212
- 13 & 14 Vict. c. 61 (*County Courts*), 145, 238
- 14 & 15 Vict. c. 83, s. 8 (*Common Law Judge assisting Chancery*), 9
- 15 & 16 Vict. c. 55 (*Trustees*), 212
- 15 & 16 Vict. c. 76 (*Common Law Procedure Act*, 1852), 10, 107
- 15 & 16 Vict. c. 80, s. 26 (*Guardianship and Maintenance*), 221
- 15 & 16 Vict. c. 86, s. 45 (*Administration Summons*), 217
- 17 & 18 Vict. c. 125 (*Common Law Procedure Act*, 1854), 10, 100, 150–154, 190
- 18 & 19 Vict. c. 43 (*Settlements on Infants*), 196, 221
- 18 & 19 Vic. c. 67 (*Bills of Exchange Act*, 1855), 57, 58
- 19 & 20 Vict. c. 97, s. 2 (*Mercantile Law Amendment Act*, 1856), 10, 101
- 19 & 20 Vict. c. 108 (*County Courts*) 101, 240
- 21 & 22 Vict. c. 27 (*Damages*), 10
- 22 & 23 Vict. c. 35 (*Trustees and Executors*), 213
- 23 & 24 Vict. c. 38 (*Trustees and Executors*), 213
- 23 & 24 Vict. c. 106 (*Amending Lands Clauses Consolidation Act*), 208
- 23 & 24 Vict. c. 126 (*Common Law Procedure Act*, 1860), 10, 107
- 25 & 26 Vict. c. 42 (*Trying Question of Fact in Equity*), 10
- 25 & 26 Vict. c. 88 (*Merchandise Marks Act*), 107
- 25 & 26 Vict. c. 89 (*Companies Act*, 1862), 214, 215
- 27 & 28 Vict. c. 112 (*Sale after Elegit*) 135
- 28 & 29 Vict. c. 99 (*County Courts*), 205
- 30 & 31 Vict. c. 131 (*Companies Act*, 1867), 214
- 30 & 31 Vict. c. 142 (*County Courts Act*, 1867), 101, 106, 143, 144, 145, 205
- 31 & 32 Vict. c. 40 (*County Courts*), s. 12.. 205
- 31 & 32 Vict. c. 54, s. 5 (*As to security for Costs*), 105, note (m.)
- 32 & 33 Vict. c. 62 (*Debtors Act*, 1869), 102, 135
- 33 & 34 Vict. c. 28 (*Solicitors' Remuneration*), 149
- 33 & 34 Vict. c. 30 (*Garnishee Procedure*), 137
- 36 & 37 Vict. c. 66 (*Judicature Act*, 1873), 1, 12, 13, 14, 20, 31, 100, 101, 141, 211
- 37 & 38 Vict. c. 78 (*Vendors and Purchasers Act*, 1874), 223

STATUTES—*continued.*

- 38 & 39 Vict. c. 50, s. 6 (*County Courts Amendment Act*, 1875), 238, 240
- 38 & 39 Vict. c. 77 (*Judicature Act*, 1875), 1, 13, 20, 32
- 38 & 39 Vict. c. 79 (*Legal Practitioners Act*, 1875), 148
- 39 & 40 Vict. c. 57 (*Circuits*), 22
- 39 & 40 Vict. c. 59 (*Appellate Jurisdiction Act*), 20, 32, 238
- 40 & 41 Vict. c. 18 (*Leases and Sales of Settled Estates*), 213, 214
- 40 & 41 Vict. c. 46 (*Circuits*), 22
- 42 Vict. c. 1 (*Circuits*), 22
- 42 & 43 Vict. c. 78 (*Judicature Officers Act*), 29, 30
- 45 & 46 Vict. c. 38 (*Settled Land Act*, 1882), 214, 222
- 45 & 46 Vict. c. 57 (*Costs*), 143
- 45 & 46 Vict. c. 75 (*Married Women's Property Act*, 1882), 42
- 46 & 47 Vict. c. 52 (*Bankruptcy Act*, 1883), Preface, p. vi.

STOP ORDER, 194

SUBMISSION TO ARBITRATION: *See* ARBITRATION.

SUBPENA, 121, 122

SUMMONS: *See also* WRIT OF SUMMONS.

- Under Order xiv., 64, 65
- Time for service of, 64
- Applications by, 85
- Procedure on, 86, 87
- For time, 87, 89
- Service of, 87, 185
- Referring to Judge, 87
- May relate to several matters, 87
- Consequence of non-attendance on, 88
- When orders made on, not to be drawn up, 88
- For particulars, 99
- To refer, 100
- For reference to County Court, 100, 101
- After issue joined to try in County Court, 101
- To change place of trial, 101
- To dismiss for want of prosecution, 102
- To hold to bail, 102
- To remove action from District Registry, 103

SUMMONS—continued.

- For security for costs, 105
- Interpleader, 107
- Costs on, 111
- Appeals from order made on, 111, 112
- For directions, 113, 114
- To proceed with accounts and inquiries, 171
- To vary certificate, 180
- Proceedings by interlocutory summons in Chancery, 185, 186
- Drawing up orders in Chancery, 186
- Under Order xv., 187, 188
- For conduct of cause, 195
- As a mode of originating proceedings, 216
- Service of originating summons, 216
- Administration, under 15 & 16 Vict. c. 86, 217
- Originating, for administration and other purposes under Rules of 1883, 218, 220
- Order may be made on such a summons without general administration, 218
- Extent of interference of such a summons with executor's general powers, 220
- For guardianship and maintenance, 221
- Under Infants' Marriage Settlement Act, 221, 222
- For discovery against lord of a manor, 222
- Under the Settled Land Act, 1882, 222, 223
- Under the Vendors' and Purchasers' Act, 1874, 223

SUPREME COURT OF JUDICATURE,

- Courts included in, 12, and *see* Preface, p. vi.

SURCHARGING AND FALSIFYING, 178**SURREBUTTER, 5****SURREJOINDER, 5****T.****TAXATION.—See COSTS.**

- Duties of taxing masters, 27, 28
- Costs of, 47
- Of costs, 146, 147
- By client, 148
- Disallowance of costs on, in certain cases, 149
- In Chancery, 202, 205
- Reviewing, 204, 205

TAXING MASTERS,

Duties and powers of, 27, 28

TESTIMONY,

Action to perpetuate, 170

THIRD-PARTY PROCEDURE, 38, 39**TIME (*See also* TIME TABLE in Appendix I., 241-247)**

For business in District Registries, 19

Where time for doing any act less than 6 days, 21

Sunday, last day expiring on, or on day when office closed, 21

For which writ remains in force, 53

For entry of appearance, 54

Hours for delivery of pleadings, &c., 67

Obtaining time to deliver a pleading, 89

For notice of trial, 117

For short notice of trial, 117

For appeal, 227

TORT,

Provision for security for costs or transfer to County Court, in action of, 106

TRANSCRIPT,

Of account of money in Court, 193

TRANSFER,

Of action from one Division to another, 16

TRIAL,

Where to take place, 71, 72

Application to change place of, 101, 102

Notice of, 115, 117, 163

Four different modes of, 115-117

Of different issues in different ways and at different times.
117

Countermand, 117

Entry for, 117, 118

Preparation for, 118, 124

Procedure at, 124, 125

Right to begin at, 125

Postponement of, 126

Plaintiff or defendant not appearing at, 127

TRIAL—continued.

- Granting of new trial, 131, 132
- In Chancery Division, 163
- Evidence on, in Chancery Division, 163, 164
- When cause may be heard short, 169

TRUST,

- Writ may be specially indorsed in action on a, 47

TRUSTEES,

- Representing beneficiaries not joined, 36
- Payment into Court by, and proceedings under Act for relief of, 210, 211
- New trustees, appointment of, 212
- Petition by, for opinion of the Court, 213

V.**VACANT POSSESSION,**

- Service in case of, 50

VACATIONS, 21, 22, 31, 67**VENUE, 71, 72, 101, 102; and note (s) on p. 102****VERDICT,**

- Definition of, 126
- Jury not agreeing on, 126

VESTING ORDER,

- Under Trustee Acts, 212
- Stamp duty on, 212

VIEW BY JURY, 124**VOUCHING ACCOUNTS, 178****W.****WARD: See INFANTS.**

- Application for marriage of, 196

WIFE: See HUSBAND AND WIFE.**WINDING-UP: See COMPANIES.****WITHDRAWAL OF ACTION OR DEFENCE: See DISCONTINUANCE.****WITHDRAWING a juror, 126**

WITNESSES,

- Attendance of, how compelled, 121, 123
- Out of the jurisdiction, 122
- In custody, 122
- Taking evidence of *de bene esse*, 122
- Disallowing questions in cross-examination of, 125, 126

WRIT OF SUMMONS,

- Forms of, Appendix II., 248, 249
- May be issued from District Registry, except in Probate matters, 45
- Indorsements on, 46, 47
- Special indorsement and its advantages, 47
- Service of, 48, 52
- Time for which it remains in force, 53
- Loss of, 53
- Concurrent writs, 53
- Amendment of, 53
- No statement of claim allowed where special indorsement to, 70
- Non-appearance to, 59, 63, 161
- In Chancery Division, marked with name of Judge, but party can no longer choose which Judge, 160

THE END.

A CATALOGUE

OF

LAW WORKS

PUBLISHED AND SOLD BY

STEVENS & HAYNES,

Law Publishers, Booksellers & Exporters,

13, BELL YARD, TEMPLE BAR,
LONDON.

BOOKS BOUND IN THE BEST BINDINGS.

Works in all Classes of Literature supplied to Order.

FOREIGN BOOKS IMPORTED.

LIBRARIES VALUED FOR PROBATE, PARTNERSHIP,
AND OTHER PURPOSES.

LIBRARIES OR SMALL COLLECTIONS OF BOOKS PURCHASED.

*A large Stock of Reports of the various Courts of England, Ireland,
and Scotland, always on hand.*

Catalogues and Estimates Furnished, and Orders Promptly Executed.

NOTE.—To avoid confusing our firm with any of a similar name,
we beg to notify that we have no connexion whatever with any
other house of business, and we respectfully request that Corre-
spondents will take special care to direct all communications to
the above names and address.

INDEX OF SUBJECTS.

	PAGE		PAGE
ADMINISTRATION ACTIONS—		COMMERCIAL AGENCY—	
Walker and Elgood	18	Campbell	9
ADMINISTRATORS—		COMMON LAW—	
Walker	6	Indermaur	24
ADMIRALTY LAW—		COMMON PLEAS DIVISION, Practice	
Jones	14	of—	
Kay	17	Griffith and Loveland	6
Smith	23	COMPANIES LAW—	
ARTIZANS AND LABOURERS'		Brice	16
DWELLINGS—Lloyd	13	Buckley	17
ASSAULTS—		Reilly's Reports	29
See MAGISTERIAL LAW.		Smith	39
BALLOT ACT—		Watts	47
Bushby	33	See MAGISTERIAL LAW.	
BANKRUPTCY—		COMPENSATION—	
Baldwin	15	Browne	19
Hazlitt	29	Lloyd	13
Ringwood	15, 29	COMPULSORY PURCHASE—	
BAR EXAMINATION JOURNAL	39	Browne	19
BIBLIOGRAPHY	40	CONSTABLES—	
BILLS OF LADING—		See POLICE GUIDE.	
Campbell	9	CONSTITUTIONAL LAW AND	
Kay	17	HISTORY—	
BILLS OF SALE—		Forsyth	14
Baldwin	15	Taswell-Langmead	21
Indermaur	28	Thomas	28
Ringwood	15, 26	CONTRACTS—	
BIRTHS AND DEATHS REGIS-		Kay	17
TRATION—		CONVEYANCING—	
Flaxman	43	Copinger, Title Deeds	45
BUILDING LEASES AND CON-		Copinger, Precedents in	40
TRACTS—		Deane, Principles of	23
Emden	8	Williams	7
CAPACITY—		COPYRIGHT—	
See PRIVATE INTERNATIONAL		Copinger	45
LAW.		CORPORATIONS—	
CAPITAL PUNISHMENT—		Brice	16
Copinger	42	Browne	19
CARRIERS—		COSTS, Crown Office—	
See RAILWAY LAW.		Short	41
SHIPMASTERS.		COVENANTS FOR TITLE—	
CHANCERY DIVISION, Practice of—		Copinger	45
Brown's Edition of Snell	22	CREW OF A SHIP—	
Griffith and Loveland	6	Kay	17
Indermaur	25	CRIMINAL LAW—	
Williams	7	Copinger	42
And see EQUITY.		Harris	27
CHARITABLE TRUSTS—		See MAGISTERIAL LAW.	
Cooke	10	CROWN LAW—	
Whiteford	20	Forsyth	14
CHURCH AND CLERGY—		Hall	30
Brice	9	Kelyrg	35
CIVIL LAW—See ROMAN LAW.		Taswell-Langmead	21
CODES—Argles	32	Thomas	28
COLLISIONS AT SEA—Kay	17	CROWN PRACTICE—	
COLONIAL LAW—		Corner	10
Canada	18	CUSTOM AND USAGE—	
Cape Colony	38	Browne	19
Forsyth	14	Mayne	38
New Zealand Statutes	18	CUSTOMS—	
Tarring	41	See MAGISTERIAL LAW.	

INDEX OF SUBJECTS—*continued.*

	PAGE		PAGE
DAMAGES—		GAME LAWS—Locke	32
Mayne	31	<i>See</i> MAGISTERIAL LAW.	
DICTIONARIES—		HACKNEY CARRIAGES—	
Brown	26	<i>See</i> MAGISTERIAL LAW.	
DIGESTS—		HINDU LAW—	
Law Magazine Quarterly Digest .	37	Coghlan	28
Menzies' Digest of Cape Reports.	38	Cunningham	38 and 42
DISCOVERY—		Mayne	38
Griffith's Judicature Acts . . .	6	Michell	44
Peile	7	HISTORY—	
DISTRICT REGISTRIES—		Braithwaite	18
Simmons	6	Taswell-Langmead	21
DIVORCE—Harrison	23	HYPOTHECATION—	
DOMICIL—		Kay	17
<i>See</i> PRIVATE INTERNATIONAL		INDEX TO PRECEDENTS—	
LAW.		Copinger	40
DUTCH LAW	38	INFANTS—	
ECCLESIASTICAL LAW—		Simpson	43
Brice	9	INJUNCTIONS—	
Smith	23	Joyce	11
EDUCATION ACTS—		INSTITUTE OF THE LAW—	
<i>See</i> MAGISTERIAL LAW.		Brown's Law Dictionary . . .	26
ELECTION LAW and PETITIONS—		INTERNATIONAL LAW—	
Bushby	33	Clarke	44
Hardcastle	33	Foote	36
O'Malley and Hardcastle . . .	33	Law Magazine	37
Seager	47	INTERROGATORIES—	
EQUITY—		Griffith and Loveland's Edition of	
Choyce Cases	35	the Judicature Acts	6
Pemberton	32	Peile	7
Snell	22	INTOXICATING LIQUORS—	
Williams	7	<i>See</i> MAGISTERIAL LAW.	
EVIDENCE—		JOINT STOCK COMPANIES—	
<i>See</i> USAGES AND CUSTOMS.		<i>See</i> COMPANIES.	
EXAMINATION OF STUDENTS—		JUDICATURE ACTS—	
Bar Examination Journal . . .	39	Cunningham and Mattinson . .	7
Indermaur	24 and 25	Griffith	6
EXCHEQUER DIVISION, Practice of—		Indermaur	25
Griffith and Loveland	6	Kelke	6
EXECUTORS—		JURISPRUDENCE—Forsyth . . .	14
Walker	6	JUSTINIAN'S INSTITUTES—	
EXTRADITION—		Campbell	47
Clarke	44	Harris	20
<i>See</i> MAGISTERIAL LAW.		LANDS CLAUSES CONSOLIDA-	
FACTORIES—		TION ACT—	
<i>See</i> MAGISTERIAL LAW.		Lloyd	13
FISHERIES—		LAND, IMPROVEMENT OF, by	
<i>See</i> MAGISTERIAL LAW.		Buildings—	
FIXTURES—		Emden	8
Brown	33	LATIN MAXIMS	28
FOREIGN LAW—		LAW DICTIONARY—	
Argles	32	Brown	26
Dutch Law	38	LAW MAGAZINE and REVIEW.	37
Foote	36	LEADING CASES—	
Harris	47	Common Law	25
FORGERY—		Constitutional Law	28
<i>See</i> MAGISTERIAL LAW.		Equity and Conveyancing . . .	25
FRAUDULENT CONVEYANCES—		Hindu Law	28
May	29	LEADING STATUTES—	
GAIIUS INSTITUTES—		Thomas	28
Harris	20		

INDEX OF SUBJECTS—*continued.*

	PAGE		PAGE
LEASES—		PARLIAMENTARY PRACTICE—	
Copingor	45	Browne	19
LEGACY AND SUCCESSION—		PARTITION—	
Hanson	10	Walker	43
LEGITIMACY AND MARRIAGE—		PASSENGERS—	
<i>See</i> PRIVATE INTERNATIONAL LAW.		<i>See</i> MAGISTERIAL LAW.	
LICENSES—		„ RAILWAY LAW.	
<i>See</i> MAGISTERIAL LAW.		PASSENGERS AT SEA—	
LIFE ASSURANCE—		Kay	17
Buckley	17	PATENT CASES—	
Reilly	29	Higgins	12
LIMITATION OF ACTIONS—		PAWNBROKERS—	
Banning	42	<i>See</i> MAGISTERIAL LAW.	
LIQUIDATION with CREDITORS—		PERSONATION AND IDENTITY—	
Baldwin	15	Moriarty	14
Ringwood	15	PETITIONS IN CHANCERY AND	
And <i>see</i> BANKRUPTCY.		LUNACY—	
LLOYD'S BONDS	14	Williams	7
LUNACY—		PILOTS—	
Williams	7	Kay	17
MAGISTERIAL LAW—		POLICE GUIDE—	
Greenwood and Martin	46	Greenwood and Martin	46
MALICIOUS INJURIES—		POLLUTION OF RIVERS—	
<i>See</i> MAGISTERIAL LAW.		Higgins	30
MARRIAGE AND LEGITIMACY—		PRACTICE BOOKS—	
Foote	36	Bankruptcy	15
MARRIED WOMEN'S PROPERTY ACTS—		Companies Law	29 and 39
Bromfield's Edition of Griffith .	40	Compensation	13
MASTER AND SERVANT—		Compulsory Purchase	19
<i>See</i> SHIPMASTERS & SEAMEN.		Conveyancing	45
MASTERS AND SERVANTS—		Damages	31
<i>See</i> MAGISTERIAL LAW.		Ecclesiastical Law	9
MERCANTILE LAW	32	Election Petitions	33
Campbell	9	Equity	7, 22 and 32
<i>See</i> SHIPMASTERS and SEAMEN.		High Court of Justice	6 and 25
„ STOPPAGE IN TRANSITU.		Injunctions	11
MERCHANDISE MARKS—		Judicature Acts	6 and 25
Daniel	42	Magisterial	46
MINES—		Pleading, Precedents of	7
Harris	47	Privy Council	44
<i>See</i> MAGISTERIAL LAW.		Railways	14
MORTMAIN—		Railway Commission	19
<i>See</i> CHARITABLE TRUSTS.		Rating	19
NATIONALITY—		Supreme Court of Judicature .	6 and 25
<i>See</i> PRIVATE INTERNATIONAL LAW.		PRECEDENTS OF PLEADING—	
NEGLIGENCE—		Cunningham and Mattinson . .	7
Campbell	40	PRIMOGENITURE—	
NEW ZEALAND—		Lloyd	13
Jurist Journal and Reports . .	18	PRINCIPLES—	
Statutes	18	Brice (Corporations)	16
OBLIGATIONS—		Browne (Rating)	19
Brown's Savigny	20	Deane (Conveyancing)	23
PARLIAMENT—		Harris (Criminal Law)	27
Taswell-Langmead	21	Houston (Mercantile)	32
Thomas	28	Indermaur (Common Law) . . .	24
		Joyce (Injunctions)	11
		Ringwood (Bankruptcy)	15
		Snell (Equity)	22

INDEX OF SUBJECTS—*continued.*

	PAGE		PAGE
PRIORITY—		SALVAGE—	
Robinson	32	Jones	14
PRIVATE INTERNATIONAL LAW—		Kay	17
Footc	36	SANITARY ACTS—	
PRIVY COUNCIL—		See MAGISTERIAL LAW.	
Michell	44	SEA SHORE—	
PROBATE—		Hall	30
Hanson	10	SHIPMASTERS AND SEAMEN—	
Harrison	23	Kay	17
PROMOTERS—		SOCIETIES—	
Watts	47	See CORPORATIONS.	
PUBLIC WORSHIP—		STAGE CARRIAGES—	
Brice	9	See MAGISTERIAL LAW.	
QUARTER SESSIONS—		STAMP DUTIES—	
Smith (F. J.)	6	Copinger	40 and 45
QUEEN'S BENCH DIVISION, Practice		STATUTE OF LIMITATIONS—	
of—		Banning	42
Griffith and Loveland	6	STATUTES—	
Indermaur	25	Hardcastle	9
QUESTIONS FOR STUDENTS—		New Zealand	18
Aldred	21	Thomas	28
Bar Examination Journal	39	STOPPAGE IN TRANSITU—	
Indermaur	25	Campbell	9
Waite	22	Houston	32
RAILWAYS—		Kay	17
Browne	19	STUDENTS' BOOKS	20—28, 39, 47
Godefroi and Shortt	14	SUCCESSION DUTIES—	
See MAGISTERIAL LAW.		Hanson	10
RATING—		SUCCESSION LAWS—	
Browne	19	Lloyd	13
REAL PROPERTY—		SUPREME COURT OF JUDICA-	
Deane	23	TURE, Practice of—	
Tarring	26	Cunningham and Mattinson	7
REGISTRATION—		Griffith and Loveland	6
Flaxman (Births and Deaths)	43	Indermaur	25
Seager (Parliamentary)	47	TELEGRAPHS—	
REMINISCENCE—		See MAGISTERIAL LAW.	
Braithwaite	18	TITLE DEEDS—	
REPORTS—		Copinger	45
Bellewe	34	TOWNS IMPROVEMENTS—	
Brooke	35	See MAGISTERIAL LAW.	
Choyce Cases	35	TRADE MARKS—	
Cooke	35	Daniel	42
Cunningham	34	TREASON—	
Election Petitions	33	Kelyng	35
Finlason	32	Taswell-Langmead	21
Gibbs, Seymour Will Case	10	TRIALS—Queen v. Gurney	32
Kelyng, John	35	ULTRA VIRES—	
Kelynge, William	35	Brice	16
Reilly	29	USAGES AND CUSTOMS—	
Shower (Cases in Parliament)	34	Browne	19
ROMAN DUTCH LAW—		Mayne	38
Van Leeuwen	38	VOLUNTARY CONVEYANCES—	
ROMAN LAW—		May	29
Brown's Analysis of Savigny	20	WATER COURSES—	
Campbell	47	Higgins	30
Harris	20	WILLS, CONSTRUCTION OF—	
		Gibbs, Report of Wallace v.	
		Attorney-General	10

In Royal 12mo, price 20s., cloth,

QUARTER SESSIONS PRACTICE, A Vade Mecum

OF GENERAL PRACTICE IN APPELLATE AND CIVIL CASES
AT QUARTER SESSIONS.

By FREDERICK JAMES SMITH,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND RECORDER OF MARGATE.

"Mr. Smith's book will, we are sure, be found to afford much assistance to the magistrates forming the Court, and to those who practice before them."—*Law Magazine*.

"This book will, we think, obtain a high place amongst the books which deal with this branch of the law."—*Law Journal*.

In one volume, 8vo, price 21s., cloth,

A COMPENDIUM OF THE LAW RELATING TO EXECUTORS AND ADMINISTRATORS, With an Appendix of Statutes, Annotated by means of References to the Text. By W. GREGORY WALKER, B.A., of Lincoln's Inn, Barrister-at-Law, Author of "The Partition Acts, 1868 and 1876; A Manual of the Law of Partition and of Sale in Lieu of Partition," &c.

"We highly approve of Mr. Walker's arrangement. . . . The Notes are full, and as far as we have been able to ascertain, carefully and accurately compiled. . . . We can commend it as bearing on its face evidence of skilful and careful labour, and we anticipate that it will be found a very acceptable substitute for the ponderous tomes of the much esteemed and valued Williams."—*Law Times*.

"Mr. Walker is fortunate in his choice of a subject, and the power of treating it succinctly, for the ponderous tomes of Williams, however satisfactory as an authority, are necessarily inconvenient for reference as well as expensive. . . . On the whole we are inclined to think the book a good and useful one."—*Law Journal*.

In one thick volume, 8vo, price 30s., cloth lettered,

THE SUPREME COURT OF JUDICATURE ACTS, 1873, 1875, and 1877; the Appellate Jurisdiction Act, 1876, and the Rules, Orders, and Costs thereunder; Edited with Notes, References, and a Copious Analytical Index. Second Edition. Embodying all the Reported Cases to Michaelmas Sittings, 1877, and a Time Table. By WILLIAM DOWNES GRIFFITH, of the Inner Temple, Barrister-at-Law, and a Judge of County Courts; and RICHARD LOVELAND LOVELAND, of the Inner Temple, Barrister-at-Law, Editor of "Hall's Essay on the Rights of the Crown in the Seashore," &c.

In royal 12mo, price 4s., cloth,

A DIGEST OF THE LAW OF PRACTICE UNDER THE JUDICATURE ACTS AND RULES, AND THE CASES DECIDED IN THE CHANCERY AND COMMON LAW DIVISIONS FROM NOVEMBER 1875, TO AUGUST 1880.

By W. H. HASTINGS KELKE, M.A., Barrister-at-Law.

In royal 12mo, price 3s. 6d., cloth,

THE PRESENT PRACTICE IN DISTRICT REGISTRIES OF THE COMMON LAW DIVISION OF THE HIGH COURT OF JUSTICE.

By FRANK SIMMONS.

In 8vo, price 12s., cloth.

THE LAW AND PRACTICE OF DISCOVERY

IN THE SUPREME COURT OF JUSTICE.

**WITH AN APPENDIX OF FORMS, ORDERS, &c., AND AN ADDENDA
GIVING THE ALTERATIONS UNDER THE
NEW RULES OF PRACTICE.**

By CLARENCE J. PEILE, of the Inner Temple, Barrister-at-Law.

"Mr. Peile gives in this volume an elaborate and systematic treatise on Discovery It will be seen that the book is very comprehensive, and covers the whole subject The whole book shows signs of care and ability There is an excellent table of multiple references to the cases cited."—*Solicitors' Journal*.

"Mr. Peile has done well in writing this book. The subject is carefully yet tersely treated."—*Law Times*.

In 8vo, price 6s., cloth,

THE NEW CONVEYANCING ACTS, Including the

CONVEYANCING AND LAW OF PROPERTY ACT, 1881, and the
SOLICITORS' REMUNERATION ACT, 1881. With an Introduction,
Notes, and Forms. By SYDNEY E. WILLIAMS, of Lincoln's Inn, Barrister-
at-Law, Author of "Petitions in Chancery and Lunacy."

In one volume, 8vo, price 18s., cloth,

THE LAW AND PRACTICE RELATING TO

PETITIONS IN CHANCERY AND LUNACY,

INCLUDING

THE SETTLED ESTATES ACT, LANDS CLAUSES ACT, TRUSTEE ACT, WINDING-
UP PETITIONS, PETITIONS RELATING TO SOLICITORS, INFANTS, Etc., Etc.

WITH AN APPENDIX OF FORMS AND PRECEDENTS.

By SYDNEY E. WILLIAMS, of Lincoln's Inn, Barrister-at-Law.

"The book is furnished with a selection of Forms and Precedents; the arrangement of matter seems convenient; and we have found it easy to consult. We have not observed any important omission within the scope of the Treatise, and the writer deserves the praise of having put together with some skill an unpretending work, which is at least more useful than certain larger law books we know of."—*Solicitors' Journal*.

In 8vo, price 28s., cloth,

A SELECTION OF PRECEDENTS OF PLEADING

UNDER THE JUDICATURE ACTS IN THE COMMON LAW DIVISIONS.

With Notes explanatory of the different Causes of Action and Grounds of Defence; and
an Introductory Treatise on the Present Rules and Principles of Pleading as
illustrated by the various Decisions down to the Present Time.

By JOHN CUNNINGHAM, of the Middle Temple, Barrister-at-Law,

Author of the "Law Relating to Parliamentary and Municipal Elections;" and

MILES WALKER MATTINSON, of Gray's Inn, Barrister-at-Law.

REVIEWS.

"The notes are very pertinent and satisfactory: the introductory chapters on the present system of pleading are excellent, and the precedents will be found very useful."—*Irish Law Times*.

"A work which, in the compass of a single portable volume, contains a brief Treatise on the Principles and Rules of Pleading, and a carefully annotated body of Forms which have to a great extent gone through the entirely separate sifting processes of Chambers, Court, and Judges' Chambers, cannot fail to be a most useful companion in the Practitioner's daily routine."—*Law Magazine and Review*.

"The work contains a treatise on the new rules of pleading which is well written, but would bear compression. To most of the precedents there are notes referring to the decisions which are most useful to the pleader in connection with the particular cause of action involved. We are disposed to think that this is the most valuable portion of the work. It is extremely convenient to have some work which collects notes of this sort in connection with pleading."—*Solicitors' Journal*.

In royal 12mo, price 20s., cloth.

EMDEN'S LAW RELATING TO
BUILDING LEASES & BUILDING CONTRACTS,
 THE IMPROVEMENT OF LAND BY, AND THE
 CONSTRUCTION OF, BUILDINGS.

WITH A FULL COLLECTION OF PRECEDENTS OF ARRANGEMENTS FOR
 BUILDING LEASES, BUILDING LEASES, CONTRACTS FOR BUILDING,
 BUILDING GRANTS, MORTGAGES, AND OTHER FORMS WITH
 RESPECT TO MATTERS CONNECTED WITH BUILDING.

TOGETHER WITH THE

STATUTES RELATING TO BUILDING,

WITH NOTES AND THE LATEST CASES UNDER THE VARIOUS SECTIONS.

And a Glossary of Architectural and Building Terms.

By ALFRED EMDEN,

OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW.

"The present treatise of Mr. Emden deals with the subject in an exhaustive manner, which leaves nothing to be desired. . . . The book contains a number of forms and precedents for building leases and agreements which are not to be found in the ordinary collection of precedents."—*The Times*.

"It is obvious that the number of persons interested in the subject of building is no small one. To supply the wants of this class by providing a treatise devoted exclusively to the law of building and kindred matters has been accordingly the main object of Mr. Emden's labours. We are able on the whole to say with confidence that his efforts deserve reward. His arrangement of the subject is clear and perspicuous. . . . It may be said without hesitation that they have been dealt with in a manner which merits high commendation."—*Law Times*.

"This is a careful digest of a branch of the law which, so far as we know, has not yet been fully treated. . . . The book seems to us a very complete and satisfactory manual, alike for the lawyer as for the architect and the builder."—*Solicitors' Journal*.

"Mr. Emden has obviously given time and labour to his task, and therefore will save time and labour to those who happen to be occupied in the same field of enquiry."—*Law Journal*.

"In this work Mr. Emden has collected and systematically arranged a mass of legal lore relating to Building Leases, Building Contracts, and generally to the improvement of land by buildings and their construction. The lawyer, the architect, and the contractor will here find brought into a focus and readily available, information which would, but for this convenient volume, have to be sought for in various quarters."—*Law Magazine*.

"It may safely be recommended as a practical text-book and guide to all people whose fortune or misfortune it is to be interested in the construction of buildings and other works."—*Saturday Review*.

"In such cases it is serviceable to possess a book like Mr. Emden's on 'the Law of Building Leases, Building Contracts, and Buildings.' The subjects, it is needless to say, are difficult, but the exposition of them is sufficiently plain to be comprehended by every intelligent layman. Mr. Emden's book is incomparably the best among those which are professedly intended for the use of architects, builders, agents, as well as lawyers. . . . throughout the pages there is not a paragraph to be discovered which is not perfectly clear."—*The Architect*.

"Mr. Emden's very useful handbook, which supplies a desideratum long felt by lawyers, architects, and others engaged in preparing leases, contracts, and in building operations generally. The work is well printed, and marginal references are given throughout."—*Building News*.

"To supply this want is the writer's object in publishing this work, and we have no hesitation in expressing our opinion that it will be found valuable by several distinct classes of persons. . . . It seems to us a good and useful book, and we recommend the purchase of it without hesitation."—*The Builder*.

"We are aware of no other work which deals exclusively with the law relating to buildings and contracts to build. Mr. Emden writes in an unusually clear style for the compiler of a law book, and has not failed to note the latest decisions in the law courts. His list of precedents is very full."—*The Field*.

"From the point of view of practical utility the work cannot fail to be of the greatest use to all who require a little law in the course of their building operations. They will find both a sound arrangement and a clear sensible style, and by perusing it with ordinary attention many matters of which they were before doubtful will become quite comprehensible."—*City Press*.

Now ready, royal 12mo, price 2s. 6d., cloth.

**EMDEN'S METROPOLIS MANAGEMENT AND
 BUILDINGS ACTS (AMENDMENT) ACT, 1882.** With Notes
 to the Sections, and an Index. Forming a Supplement to the "Law Relating to
 Building Leases, Building Contracts," &c. By ALFRED EMDEN, of the Inner
 Temple, Barrister-at-Law.

"There is a copious index to the work, and the architect and surveyor who require to be well informed up to present date in the Statute Law will obtain this Supplement to Mr. Emden's valuable handbook."—*Building News*.

In one volume, royal 8vo, price 30s., cloth,
**THE LAW RELATING TO THE
 SALE OF GOODS AND COMMERCIAL AGENCY.**

By ROBERT CAMPBELL, M.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW; ADVOCATE OF THE SCOTCH BAR;
 AUTHOR OF THE "LAW OF NEGLIGENCE," ETC.

"His book will, we are convinced, prove of great service as a thoughtful and clear exposition of a branch of law of practical interest, not only to the legal profession, but also to the merchant, the shipper, the underwriter and the broker, and to the mercantile community in general. The Table of Contents is analytical and remarkably full; being, in fact, almost an Index within an Index."—*Law Magazine*.

"Notwithstanding the existence of the works referred to by the author in his preface, he has produced a treatise which cannot fail to be of utility to practising lawyers, and to increase his own reputation."—*Law Times*.

In one volume, 8vo, 1879, price 20s., cloth,
**A TREATISE ON THE RULES WHICH GOVERN
 THE CONSTRUCTION AND EFFECT
 OF STATUTORY LAW.**

WITH AN APPENDIX
 OF CERTAIN WORDS AND EXPRESSIONS USED IN STATUTES, WHICH
 HAVE BEEN JUDICIALLY OR STATUTABLY CONSTRUED.

By HENRY HARDCASTLE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW;
 EDITOR OF "BUSHBY'S ELECTION LAW," "HARDCASTLE'S ELECTION PETITIONS," AND
 JOINT-EDITOR OF "ELECTION PETITION REPORTS."

"We should be doing less than justice, however, to the usefulness of Mr. Hardcastle's book if we did not point out a valuable special feature, consisting of an appendix devoted to the collection of a list of words which have been judicially or statutorily explained, with reference to the cases in which they are so explained. We believe this is a feature peculiar to Mr. Hardcastle's Treatise, and it is one which cannot fail to commend itself to the profession."—*Law Magazine and Review*.

"A vast amount of information will be found in its pages—much of it arranged so as to be got at without much difficulty; the chapters and sections being headed with lines of indication. We can only hope Mr. Hardcastle will receive that measure of success to which the amount of labour which he has evidently bestowed upon the work entitles him."—*Law Times*.

"His method and object are excellent, and it appears to be the fruit of much careful study."—*Daily News*.

In one volume, 8vo, price 28s., cloth,
THE LAW RELATING TO PUBLIC WORSHIP;

WITH SPECIAL REFERENCE TO
**Matters of Ritual and Ornamentation,
 AND THE MEANS OF SECURING THE DUE OBSERVANCE THEREOF
 AND CONTAINING IN EXTENSO,**

**WITH NOTES AND REFERENCES,
 THE PUBLIC WORSHIP REGULATION ACT, 1874; THE CHURCH DISCIPLINE ACT;
 THE VARIOUS ACTS OF UNIFORMITY; THE LITURGIES OF 1549, 1552, AND 1559,
 COMPARED WITH
 THE PRESENT RUBRIC; THE CANONS; THE ARTICLES; AND THE INJUNCTIONS,
 ADVERTISEMENTS, & OTHER ORIGINAL DOCUMENTS OF LEGAL AUTHORITY.**

By SEWARD BRICE, LL.D.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"To the vast number of people who in various ways are interested in the working of the Act, Mr. Brice's volume cannot fail to be welcome. It is well conceived and carefully executed."—THE TIMES.

Now ready, in 8vo, price 6s. 6d., cloth,

THE CUSTOMS AND INLAND REVENUE ACTS, 1880 and 1881

(43 VICT. CAP. 14, and 44 VICT. CAP. 12.),

So far as they Relate to the Probate, Legacy, and Succession Duties, and the Duties on Accounts. With an Introduction and Notes. By ALFRED HANSON, Esq., Comptroller of Legacy and Succession Duties.

•• This forms a Supplement to the Third Edition of the Probate, Legacy, and Succession Duty Acts, by the same Author.

Third Edition, in 8vo, 1876, price 25s., cloth,

THE ACTS RELATING TO PROBATE, LEGACY, AND SUCCESSION DUTIES. Comprising the 36 Geo. III. c. 52; 45 Geo. III. c. 28; 55 Geo. III. c. 184; and 16 & 17 Vict. c. 51; with an Introduction, Copious Notes, and References to all the Decided Cases in England, Scotland, and Ireland. An Appendix of Statutes, Tables, and a full Index. By ALFRED HANSON, of the Middle Temple, Esq., Barrister-at-Law, Comptroller of Legacy and Succession Duties. Third Edition. Incorporating the Cases to Michaelmas Sittings, 1876.

"It is the only complete book upon a subject of great importance.

"Mr. Hanson is peculiarly qualified to be the adviser at such a time. Hence a volume without a rival."—*Law Times*.

"His book is in itself a most useful one; its author knows every in and out of the subject, and has presented the whole in a form easily and readily handled, and with good arrangement and clear exposition."—*Solicitors' Journal*.

In royal 8vo, 1877, price 10s., cloth,

LES HOSPICES DE PARIS ET DE LONDRES.

THE CASE OF LORD HENRY SEYMOUR'S WILL (WALLACE v. THE ATTORNEY-GENERAL).

Reported by FREDERICK WAYMOUTH GIBBS, C.B., Barrister-at-Law,
LATE FELLOW OF TRINITY COLLEGE, CAMBRIDGE.

In preparation, and to be published shortly,

CORNER'S CROWN PRACTICE :

Being the Practice of the Crown Side of the Queen's Bench Division of the High Court of Justice; with an Appendix of Rules, Forms, Scale of Costs and Allowances, &c.

SECOND EDITION.

By FREDERICK H. SHORT, of the Crown Office, and M. D. CHALMERS,
OF THE INNER TEMPLE, BARRISTER-AT-LAW, AUTHOR OF "DIGEST OF THE LAW OF
BILLS OF EXCHANGE."

In 8vo, 1867, price 16s., cloth,

CHARITABLE TRUSTS ACTS, 1853, 1855, 1860;

THE CHARITY COMMISSIONERS JURISDICTION ACT, 1862;

THE ROMAN CATHOLIC CHARITIES ACTS:

Together with a Collection of Statutes relating to or affecting Charities, including the Mortmain Acts, Notes of Cases from 1853 to the present time, Forms of Declarations of Trust, Conditions of Sale, and Conveyance of Charity Land, and a very copious Index. Second Edition.

By HUGH COOKE and R. G. HARWOOD, of the Charity Commission.

"Charities are so numerous, so many persons are directly or indirectly interested in them, they are so much abused, and there is such a growing desire to rectify those abuses and to call in the aid of the commissioners for a more beneficial application of their funds, that we are not surprised to receive a

second edition of a collection of all the statutes that regulate them, admirably annotated by two such competent editors as Messrs. Cooke and Harwood, whose official experience peculiarly qualifies them for the task."—*Law Times*.

In one volume, royal 8vo, 1877, price 30s., cloth,

THE DOCTRINES & PRINCIPLES OF THE LAW OF INJUNCTIONS.

By WILLIAM JOYCE,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

"Mr. Joyce, whose learned and exhaustive work on 'The Law and Practice of Injunctions' has gained such a deservedly high reputation in the Profession, now brings out a valuable companion volume on the 'Doctrines and Principles' of this important branch of the Law. In the present work the Law is enunciated in its abstract rather than its concrete form, as few cases as possible being cited; while at the same time no statement of a principle is made unsupported by a decision, and for the most part the very language of the Courts has been adhered to. Written as it is by so acknowledged a master of his subject, and with the conscientious carefulness that might be expected from him, this work cannot fail to prove of the greatest assistance alike to the Student—who wants to grasp principles freed from their superincumbent details—and to the practitioner, who wants to refresh his memory on points of doctrine amidst the oppressive details of professional work."—*Law Magazine and Review*.

BY THE SAME AUTHOR.

In two volumes, royal 8vo, 1872, price 70s., cloth,

THE LAW & PRACTICE OF INJUNCTIONS.

EMBRACING

ALL THE SUBJECTS IN WHICH COURTS OF EQUITY
AND COMMON LAW HAVE JURISDICTION.

By WILLIAM JOYCE,
OF LINCOLN'S INN, BARRISTER-AT-LAW.

REVIEWS.

"A work which aims at being so absolutely complete, as that of Mr. Joyce upon a subject which is of almost perpetual recurrence in the Courts, cannot fail to be a welcome offering to the profession, and, doubtless, it will be well received and largely used, for it is as absolutely complete as it aims at being. . . . This work is, therefore, eminently a work for the practitioner, being full of practical utility in every page, and every sentence, of it. . . . We have to congratulate the profession on this new acquisition to a digest of the law, and the author on his production of a work of permanent utility and fame."—*Law Magazine and Review*.

"Mr. Joyce has produced, not a treatise, but a complete and compendious *exposition* of the Law and Practice of Injunctions both in equity and common law.

"Part III. is devoted to the practice of the Courts. *Contains an amount of valuable and technical matter nowhere else collected.*

"From these remarks it will be sufficiently perceived what elaborate and painstaking industry, as well as legal knowledge and ability, has been necessary in the compilation of Mr. Joyce's work. No labour has been spared to save the practitioner labour, and no research has been omitted which could tend towards the elucidation and exemplification of the general principles of the Law and Practice of Injunctions."—*Law Journal*.

"He does not attempt to go an inch beyond that for which he has express written authority; he allows the cases to speak, and does not speak for them.

"The work is something more than a treatise on the Law of Injunctions. It gives us the general law on almost every subject to which the process of injunction is applicable. Not only English, but American decisions are cited, the aggregate number being 3,500, and the statutes cited 160, whilst the index is, we think, the most elaborate we have ever seen—occupying nearly 200 pages. The work is probably entirely exhaustive."—*Law Times*.

"This work, considered either as to its matter or manner of execution, is no ordinary work. It is a complete and exhaustive treatise both as to the law and the practice of granting injunctions. It must supersede all other works on the subject. The terse statement of the practice will be found of incalculable value. We know of no book as suitable to supply a knowledge of the law of injunctions to our common law friends as Mr. Joyce's exhaustive work. It is alike indispensable to members of the Common Law and Equity Bars. Mr. Joyce's great work would be a casket without a key unless accompanied by a good index. His index is very full and well arranged. We feel that this work is destined to take its place as a standard text-book, and the text-book on the particular subject of which it treats. The author deserves great credit for the very great labour bestowed upon it. The publishers, as usual, have acquitted themselves in a manner deserving of the high reputation they bear."—*Canada Law Journal*.

HIGGINS'S DIGEST OF PATENT CASES.

Price 21s.,

A DIGEST OF THE REPORTED CASES

RELATING TO THE

LAW AND PRACTICE OF LETTERS PATENT FOR INVENTIONS,

Decided from the passing of the Statute of Monopolies to the present time;

Together with an Appendix, giving the Reported Cases from June, 1875, to March, 1880,
as also some Cases not reported elsewhere.

BY CLEMENT HIGGINS, M.A., F.C.S.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"Mr. Higgins's work will be useful as a work of reference. Upwards of 700 cases are digested: and, besides a table of contents, there is a full index to the subject-matter; and that index, which greatly enhances the value of the book, must have cost the author much time, labour, and thought."—*Law Journal*.
"This is essentially," says Mr. Higgins in his preface, 'a book of reference.' It remains to be added whether the compilation is reliable and exhaustive. It is only fair to say that we think it is; and we will add, that the arrangement of subject-matter (chronological under each heading, the date, and double, or even treble references being appended to every decision) and the neat and carefully-executed index (which is decidedly above the average) are such as no reader of 'essentially a book of reference' could quarrel with."—*Solicitors' Journal*.

"On the whole, Mr. Higgins's work has been well accomplished. It has ably fulfilled its object by supplying a reliable and authentic summary of the reported patent law cases decided in English courts of law and equity, while presenting a complete history of legal doctrine on the points of law and practice relating to its subject."—*Irish Law Times*.

"Mr. Higgins has, with wonderful and accurate research, produced a work which is much needed, since we have no collection of patent cases which does not terminate years ago. We consider, too, if an inventor furnishes himself with this Digest and a little treatise on the law of patents, he will be able to be as much his own patent lawyer as it is safe to be."—*Scientific and Literary Review*.

"Mr. Higgins's object has been to supply a reliable and exhaustive summary of the reported patent cases decided in English courts of law and equity, and this object he appears to have attained. The classification is excellent, being, as Mr. Higgins very truly remarks, that which naturally suggests itself from the practical working of patent law rights. The lucid style in which Mr. Higgins has written his Digest will not fail to recommend it to all who may consult his book; and the very copious index, together with the table of cases, will render the work especially valuable to professional men."—*Mining Journal*.

"The appearance of Mr. Higgins's Digest is exceedingly opportune. The plan of the work is definite and simple. We consider that Mr. Higgins, in the production of this work, has met a long-felt demand. Not merely the legal profession and patent agents, but patentees, actual or intending inventors, manufacturers, and their scientific advisers will find the Digest an invaluable book of reference."—*Chemical News*.

"The arrangement and condensation of the main principles and facts of the cases here digested render the work invaluable in the way of reference."—*Standard*.

"The work constitutes a step in the right direction, and it is likely to prove of much service as a guide, a by no means immaterial point in its favour being that it includes a number of comparatively recent cases."—*Engineer*.

"From these decisions the state of the law upon any point connected with patents may be deduced. In fine, we must pronounce the book as invaluable to all whom it may concern."—*Quarterly Journal of Science*.

In 8vo, price 6s., sewed,

A DIGEST OF THE REPORTED CASES

RELATING TO THE

LAW AND PRACTICE OF LETTERS PATENT FOR INVENTIONS

DECIDED BETWEEN JUNE, 1875, AND MARCH, 1880:

TOGETHER WITH SOME UNREPORTED CASES,

FORMING

AN APPENDIX TO DIGEST OF PATENT CASES.

By CLEMENT HIGGINS,

BARRISTER-AT-LAW.

In 8vo, price 25s., cloth,

THE LAW OF COMPENSATION FOR LANDS, HOUSES, &c.

UNDER THE LANDS CLAUSES, RAILWAY CLAUSES CONSOLIDATION AND METROPOLITAN ACTS,

THE ARTIZANS AND LABOURERS' DWELLINGS IMPROVEMENT ACT, 1875.

WITH A FULL COLLECTION OF FORMS AND PRECEDENTS.

FIFTH EDITION, ENLARGED, WITH ADDITIONAL FORMS, INCLUDING PRECEDENTS OF BILLS OF COSTS.

By EYRE LLOYD,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"The work is eminently a practical one, and is of great value to practitioners who have to deal with compensation cases."—*Solicitors' Journal*.

"A fourth edition of Mr. Lloyd's valuable treatise has just been published. Few branches of the law affect so many and such important interests as that which gives to private individuals compensation for property compulsorily taken for the purpose of public improvements. The questions which arise under the different Acts of Parliament now in force are very numerous and difficult, and a collection of decided cases epitomised and well arranged, as they are in Mr. Lloyd's work, cannot fail to be a welcome addition to the library of all who are interested in landed property, whether as owners, land agents, public officers, or solicitors."—*MIDLAND COUNTIES HERALD*.

"It is with much gratification that we have to express our unhesitating opinion that Mr. Lloyd's treatise will prove thoroughly satisfactory to the profession, and to the public at large. Thoroughly

satisfactory it appears to us in every point of view—comprehensive in its scope, exhaustive in its treatment, sound in its exposition."—*Irish Law Times*.

"In providing the legal profession with a book which contains the decisions of the Courts of Law and Equity upon the various statutes relating to the Law of Compensation, Mr. Eyre Lloyd has long since left all competitors in the distance, and his book may now be considered the standard work upon the subject. The plan of Mr. Lloyd's book is generally known, and its lucidity is appreciated; the present quite fulfils all the promises of the preceding editions, and contains in addition to other matter a complete set of forms under the Artizans and Labourers Act, 1875, and specimens of Bills of Costs, which will be found a novel feature, extremely useful to legal practitioners."—*JUSTICE OF THE PEACE*.

"The work is one of great value. It deals with a complicated and difficult branch of the law, and it deals with it exhaustively. It is not merely a compilation or collection of the statutes bearing on the subject, with occasional notes and references. Rather it may be described as a comprehensive treatise on, and digest of, the law relating to the compulsory acquisition and purchase of land by public companies and municipal and other local authorities, and the different modes of assessment

of the compensation. All the statutes bearing on the subject have been collated, all the law on the subject collected, and the decisions conveniently arranged. With this comprehensiveness of scope is united a clear statement of principles, and practical handling of the points which are likely to be contested, and especially of those in which the decisions are opposed or differently understood."—*Local Government Chronicle*.

In 8vo, price 7s., cloth,

THE SUCCESSION LAWS OF CHRISTIAN COUNTRIES,

WITH SPECIAL REFERENCE TO

THE LAW OF PRIMOGENITURE AS IT EXISTS IN ENGLAND.

By EYRE LLOYD, B.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "THE LAW OF COMPENSATION UNDER THE LANDS CLAUSES CONSOLIDATION ACTS," ETC.

"Mr. Lloyd has given us a very useful and compendious little digest of the laws of succession which exist at the present day in the principal States of both Europe and America; and we should say it is a book which not only every lawyer, but every politician and statesman, would do well to add to his library."—*Pall Mall Gazette*.

"Mr. Eyre Lloyd compresses into little more than eighty pages a considerable amount of matter both valuable and interesting; and his quotations from Diplomatic Reports by the present Lord Lytton, and other distinguished public servants, throw a picturesque light on a narrative much of which is necessarily dry reading. We can confidently recommend Mr. Eyre Lloyd's new work as one of great practical utility, if, indeed, it be not unique in our language, as a book of reference on Foreign Succession Laws."—*Law Magazine and Review*.

"Mr. Eyre Lloyd has composed a useful and interesting abstract of the laws on the subject of succession to property in Christian countries, with special reference to the law of primogeniture in England."—*Saturday Review*.

"This is a very useful little handy book on foreign succession laws. It contains in an epitomised form information which would have to be sought through a great number of scattered authorities and foreign law treatises, and will be found of great value to the lawyer, the writer, and the political student."—*Standard*.

In one volume, royal 8vo, price 30s., cloth,

CASES AND OPINIONS ON CONSTITUTIONAL LAW, AND VARIOUS POINTS OF ENGLISH JURISPRUDENCE.

Collected and Digested from Official Documents and other Sources; with Notes. By
WILLIAM FORSYTH, M.A., M.P., Q.C., Standing Counsel to the Secretary of
State in Council of India, Author of "Hortensius," "History of Trial by Jury,"
"Life of Cicero," etc., late Fellow of Trinity College, Cambridge.

From the CONTEMPORARY REVIEW.

"We cannot but regard with interest a book which, within moderate compass, presents us with the opinions or *responses* of such lawyers and statesmen as Somers, Holt, Hardwicke, Mansfield, and, to come down to our own day, Lyndhurst, Abinger, Denman, Cranworth, Campbell, St. Leonards, Westbury, Chelmsford, Cockburn, Cairns, and the present Lord Chancellor Hatherley. At the end of each chapter of the 'Cases and opinions' Mr. Forsyth has added notes of his own, containing a most excellent summary of all the law bearing on that branch of his subject to which the 'Opinions' refer."

From the LAW MAGAZINE and LAW REVIEW.

"Mr. Forsyth has largely and beneficially added to our legal stores. His work may be regarded as in some sense a continuation of 'Chalmers's Opinions of Eminent Lawyers.' . . . The constitutional

relations between England and her colonies are becoming every day of more importance. The work of Mr. Forsyth will do more to make these relations perfectly clear than any which has yet appeared. Henceforth it will be the standard work of reference in a variety of questions which are constantly presenting themselves for solution both here and in our colonies."

From the LAW TIMES.

"This one volume of 560 pages or thereabouts is a perfect storehouse of law not readily to be found elsewhere, and the more useful because it is not abstract law, but the application of principles to particular cases. Mr. Forsyth's plan is that of classification. He collects in separate chapters a variety of opinions bearing upon separate branches of the law . . . This is a book to be read, and therefore we recommend it, not to all lawyers only, but to every law student. The editor's own notes are not the least valuable portion of the volume."

In one thick volume, 8vo, price 32s., cloth,

THE LAW OF RAILWAY COMPANIES.

Comprising the Companies Clauses, the Lands Clauses, the Railways Clauses Consolidation Acts, the Railway Companies Act, 1867, and the Regulation of Railways Act, 1868; with Notes of Cases on all the Sections, brought down to the end of the year 1868; together with an Appendix giving all the other material Acts relating to Railways, and the Standing Orders of the Houses of Lords and Commons; and a copious Index. By HENRY GODEFROI, of Lincoln's Inn, and JOHN SHORTT, of the Middle Temple, Barristers-at-Law.

"The title of this book is the best possible explanation of its contents. Here we have all the statutes affecting Railway Companies, with the standing orders of Parliament, in a volume exquisitely printed, and of most convenient size and

form. . . . We believe that we have said enough to show that this book will prove to be of pre-eminent value to practitioners, both before Parliamentary committees and in the Courts of Law and Equity."—*Law Journal*.

In 8vo, price 2s. 6d.,

MORIARTY ON PERSONATION AND DISPUTED IDENTITY AND THEIR TESTS.

In a handy volume, crown 8vo, 1870, price 10s. 6d., cloth,

THE LAW OF SALVAGE,

As administered in the High Court of Admiralty and the County Courts; with the Principal Authorities, English and American, brought down to the present time; and an Appendix, containing Statutes, Forms, Table of Fees, etc. By EDWYN JONES, of Gray's Inn, Barrister-at-Law.

"This book will be of infinite service to lawyers practising in the maritime law courts and to those engaged in shipping. In short, Mr. Jones's book

is a complete guide, and is full of information upon all phases of the subject, tersely and clearly written."—*Liverpool Journal of Commerce*.

In 8vo, 1867, price 1s., sewed,

LLOYD'S BONDS: THEIR NATURE AND USES.

By HENRY JEFFERD TARRANT, of the Middle Temple, Barrister-at-Law.

Second Edition, in 8vo, price 10s., cloth,

THE PRINCIPLES OF BANKRUPTCY.

WITH AN APPENDIX,

CONTAINING

THE GENERAL RULES OF 1870, 1871, 1873, & 1878, SCALE OF COSTS, AND THE BILLS OF SALE ACTS, 1878 & 1882, AND THE RULES OF DECEMBER 1882.

By RICHARD RINGWOOD, B.A.,

OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW; LATE SCHOLAR OF TRINITY COLLEGE, DUBLIN.

"This edition is a considerable improvement on the first, and although chiefly written for the use of Students, the work will be found useful to the practitioner."—*Law Times*.

"The author of this convenient handbook sees the point upon which we insist elsewhere in regard to the chief aim of any system of Bankruptcy Law which should deserve the title of National. . . . There can be no question that a sound measure of Reform is greatly needed, and would be welcomed by all parties in the United Kingdom. Pending this amendment it is necessary to know the Law as it is, and those who have to deal with the subject in any of its practical legal aspects will do well to consult Mr. Ringwood's unpretending but useful volume."—*Law Magazine*.

"The above work is written by a distinguished scholar of Trinity College, Dublin. Mr. Ringwood has chosen a most difficult and unattractive subject, but he has shown sound judgment and skill in the manner in which he has executed his task. His book does not profess to be an exhaustive treatise on bankruptcy law, yet in a neat and compact volume we have a vast amount of well-digested matter. The reader is not distracted and puzzled by having a long list of cases flung at him at the end of each page, as the general effect of the law is stated in a few well-selected sentences, and a reference given to the leading decisions only on the subject. . . . An excellent index, and a table of cases, where references to four sets of contemporary reports may be seen at a glance, show the industry and care with which the work has been done."—*Daily Paper*.

Third Edition, in royal 12mo, price 18s., cloth,

A CONCISE TREATISE UPON

THE LAW OF BANKRUPTCY.

WITH AN APPENDIX,

CONTAINING

The Bankruptcy Act, 1869; General Rules of 1870, 1871, 1873, & 1878;

Forms of 1870 and 1871; Scale of Costs; the Debtors Act, 1869; Debtors Act, 1878; and Bills of Sale Acts, 1878 and 1882.

By EDWARD T. BALDWIN, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"This is an excellent book It is an eminently practical treatise, and at once concise and exact We have no doubt that Mr. Baldwin's book will be found, alike as a guide and as a work of reference, most useful to both branches of the profession."—*Law Magazine*.

"This edition is a praiseworthy effort to reduce the Law of Bankruptcy within moderate limits. It refers to all the important cases on the Act of 1869, and concludes with an excellent Index."—*Law Times*.

"This treatise is certainly the most readable book on the subject, and so carefully is the text annotated, that it is perfectly reliable."—*Law Journal*.

THE LAW OF CORPORATIONS.

In one volume of One Thousand Pages, royal 8vo, price 42s., cloth,

A TREATISE ON THE DOCTRINE OF

ULTRA VIRES:

BEING

An Investigation of the Principles which Limit the Capacities, Powers, and Liabilities of
CORPORATIONS,

AND MORE ESPECIALLY OF

JOINT STOCK COMPANIES.

SECOND EDITION.

By SEWARD BRICE, M.A., LL.D. LONDON,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

REVIEWS.

"Despite its unpromising and cabalistic title, and the technical nature of its subject, it has so recommended itself to the profession that a second edition is called for within three years from the first publication; and to this call Mr. Brice has responded with the present volume, the development of which in excess of its predecessor is remarkable even in the annals of law books. Sixteen hundred new cases have been introduced, and, instead of five hundred pages octavo, the treatise occupies a thousand very much larger pages. This increase in bulk is partly due to the incorporation with the English law on the subject of the more important American and Colonial doctrines and decisions—a course which we think Mr. Brice wise in adopting, since the judgments of American tribunals are constantly becoming more frequently quoted and more respectfully considered in our own courts, particularly on those novel and abstruse points of law for which it is difficult to find direct authority in English reports. In the present speculative times, anything relating to Joint-Stock Companies is of public importance, and the points on which the constitution and operation of these bodies are affected by the doctrine of *Ultra Vires* are just those which are most material to the interests of the shareholders and of the community at large. . . . Some of the much disputed questions in regard to corporations, on which legal opinion is still divided, are particularly well treated. Thus with reference to the authority claimed by the Courts to restrain corporations or individuals from applying to Parliament for fresh powers in breach of their express agreements or in derogation of private rights, Mr. Brice most elaborately and ably reviews the conflicting decisions on this apparent interference with the rights of the subject, which threatened at one time to bring the Legislature and the Courts into a collision similar to that which followed on the well-known case of *Ashby v. White*. . . . Another very difficult point on which Mr. Brice's book affords full and valuable information is as to the liability of Companies on contracts entered into before their formation by the promoters, and subsequently ratified or adopted by the Company, and as to the claims of promoters themselves for services rendered to the inchoate Company. . . . The chapter on the liabilities of corporations *ex delicto* for fraud and other torts committed by their agents within the region of their authority seems to us remarkably well done, reviewing as it does all the latest and somewhat contradictory decisions on the point. . . . On the whole, we consider Mr. Brice's exhaustive work a valuable addition to the literature of the profession."—SATURDAY REVIEW.

"The doctrine which forms the subject of Mr. Seward Brice's elaborate and exhaustive work is a remarkable instance of rapid growth in modern Jurisprudence. His book, indeed, now almost constitutes a Digest of the Law of Great Britain and her Colonies and of the United States on the Law of Corporations—a subject vast enough at home, but even more so beyond the Atlantic, where Corporations are so numerous and powerful. Mr. Seward Brice relates that he has embodied a reference in the present edition to about 1600 new cases, and expresses the hope that he has at least referred to 'the chief cases.' We should think there can be few, even of the Foreign Judgments and Dicta, which have not found their way into his pages. The question what is and what is not *Ultra Vires* is one of very great importance in commercial countries like Great Britain and the United States. Mr. Seward Brice has done a great service to the cause of Comparative Jurisprudence by his new recension of what was from the first a unique text-

book on the Law of Corporations. He has gone far towards effecting a Digest of that Law in its relation to the Doctrine of *Ultra Vires*, and the second edition of his most careful and comprehensive work may be commended with equal confidence to the English, the American, and the Colonial Practitioner, as well as to the scientific Jurist."—*Law Magazine and Review*.

"It is the Law of Corporations that Mr. Brice treats of (and treats of more fully, and at the same time more scientifically, than any work with which we are acquainted), not the law of principal and agent; and Mr. Brice does not do his book justice by giving it so vague a title."—*Law Journal*.

"A guide of very great value. Much information on a difficult and unattractive subject has been collected and arranged in a manner which will be of great assistance to the seeker after the law on a point involving the powers of a company."—*Law Journal*. (Review of First Edition.)

"On this doctrine, first introduced in the Common Law Courts in *East Anglian Railway Co. v. Eastern Counties Railway Co.*, BRICE ON *ULTRA VIRES* may be read with advantage."—*Judgment of LORD JUSTICE BRANWELL, in the Case of Evershed v. L. & N. W. Ry. Co.* (L. R., 3 Q. B. Div. 147.)

Now Ready, Fourth Edition, in royal 8vo, price 32s. cloth,

BUCKLEY ON THE COMPANIES ACTS.

FOURTH EDITION BY THE AUTHOR.

THE LAW AND PRACTICE UNDER THE COMPANIES ACTS,
1862 TO 1880,

THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870,
AND

THE LIFE ASSURANCE COMPANIES ACTS, 1870 TO 1872.

A Treatise on the Law of Joint Stock Companies.

Containing the Statutes, with the Rules, Orders, and Forms, regulating Proceedings in the Chancery Division of the High Court of Justice. By H. BURTON BUCKLEY, M.A., of Lincoln's Inn, Barrister-at-Law, late Fellow of Christ's College, Cambridge.

"We have no doubt that the present edition of this useful and thorough work will meet with as much acceptance as its predecessors have."—*Scottish Journal of Jurisprudence*.

"The mere arrangement of the leading cases under the successive sections of the Acts, and the short explanation of their effect, are of great use in saving much valuable time, which would be otherwise spent in searching the different digests; but the careful manner in which Mr. Buckley has annotated the Acts, and placed the cases referred to under distinct headings, renders his work particularly useful to all who are required to advise in the complications in which the shareholders and creditors of companies frequently find themselves involved. The Index, always an important part of a law book, is full and well arranged."—*Scottish Journal of Jurisprudence*.

In two volumes, royal 8vo, 70s. cloth,

THE LAW RELATING TO

SHIPMASTERS AND SEAMEN.

THEIR APPOINTMENT, DUTIES, POWERS, RIGHTS, LIABILITIES,
AND REMEDIES.

By JOSEPH KAY, Esq., M.A., Q.C.,

OF TRIN. COLL. CAMBRIDGE, AND OF THE NORTHERN CIRCUIT;

SOLICITOR-GENERAL OF THE COUNTY PALATINE OF DURHAM; ONE OF THE JUDGES OF THE COURT OF
RECORD FOR THE HUNDRED OF SALFORD;

AND AUTHOR OF "THE SOCIAL CONDITION AND EDUCATION OF THE PEOPLE
IN ENGLAND AND EUROPE."

REVIEWS OF THE WORK.

From the LIVERPOOL JOURNAL OF COMMERCE.

"The law relating to Shipmasters and Seamen"—such is the title of a voluminous and important work which has just been issued by Messrs. Stevens and Haynes, the eminent law publishers, of London. The author is Mr. Joseph Kay, Q.C., and while treating generally of the law relating to shipmasters and seamen, he refers more particularly to their appointment, duties, rights, liabilities, and remedies. It consists of two large volumes, the text occupying nearly twelve hundred pages, and the value of the

work being enhanced by copious appendices and index, and by the quotation of a mass of authorities. . . . The work must be an invaluable one to the shipowner, shipmaster, or consul at a foreign port. The language is clear and simple, while the legal standing of the author is a sufficient guarantee that he writes with the requisite authority, and that the cases quoted by him are decisive as regards the points on which he touches."

From the LAW JOURNAL.

"The author tells us that for ten years he has been engaged upon it. . . . Two large volumes containing 1187 pages of text, 81 pages of appendices, 98 pages of index, and upwards of 780 cited cases, attest the magnitude of the work designed and accomplished by Mr. Kay.

"Mr. Kay says that he has 'endeavoured to

compile a guide and reference book for masters, ship agents, and consuls.' He has been so modest as not to add lawyers to the list of his pupils; but his work will, we think, be welcomed by lawyers who have to do with shipping transactions, almost as cordially as it undoubtedly will be by those who occupy their business in the great waters."

Now ready, in 8vo, price 15s., cloth,

THE LAW AND PRACTICE RELATING TO

THE ADMINISTRATION OF DECEASED PERSONS

BY THE CHANCERY DIVISION OF THE HIGH COURT OF JUSTICE;

WITH AN APPENDIX OF ORDERS AND FORMS, Annotated by
References to the Text.

By W. GREGORY WALKER and EDGAR J. ELGOOD,

OF LINCOLN'S INN, BARRISTERS-AT-LAW.

"All those having the conduct of administration actions will find this work of great assistance; it covers the whole ground of the law and practice from the institution of proceedings to the final wind up."—*Law Times*.

"In this volume the most important branch of the administrative business of the Chancery Division is treated with conciseness and care. Judging from the admirable clearness of expression which characterises the entire work, and the labour which has evidently been bestowed on every detail, we do not think that a literary executorship could have devolved upon a more able and conscientious representative. . . . Useful chapters are introduced in their appropriate places, dealing with the

'Parties to administration actions,' 'The proofs of claims in Chambers,' and 'The cost of administration actions.' To the last-mentioned chapter we gladly accord special praise, as a clear and succinct summary of the law, from which so far as we have tested it, no proposition of any importance has been omitted. . . . An elaborately constructed table of cases, with references in separate columns to all the reports, and a fairly good index much increase the utility of the work."—*Solicitors' Journal*.

"This is a book which will supply a want which has long been felt. . . . As a practical manual for the counsel in practice, it will be found extremely useful. It is full, fairly concise, clear, and exact. The index is good."—*Law Journal*.

In 8vo, price 1s.,

THE "SIX CLERKS IN CHANCERY;"

Their SUCCESSORS IN OFFICE, and the "HOUSES" they lived in.
A Reminiscence.

By THOMAS W. BRAITHWAITE, of the Record and Writ Clerks' Office.

"The removal of the Record and Writ Office to the new building has suggested the publication of an interesting and opportune little piece of legal history."—*Solicitors' Journal*.

2 vols. 4to, 1876—77. 5l. 5s. calf,

THE

PRACTICAL STATUTES OF NEW ZEALAND.

WITH NOTES AND INDEX.

EDITED BY G. B. BARTON, of the Middle Temple, Barrister-at-Law.

In royal 8vo, price 30s., half calf,

THE CONSTITUTION OF CANADA.

THE BRITISH NORTH AMERICA ACT, 1867;

ITS INTERPRETATION, GATHERED FROM THE DECISIONS OF COURTS, THE DICTA OF JUDGES, AND THE OPINIONS OF STATESMEN AND OTHERS;

To which is added the Quebec Resolutions of 1864, and the Constitution of the United States.

By JOSEPH DOUTRE, Q.C., of the Canadian Bar.

In one thick volume, 8vo, 1875, price 25s., cloth,

THE PRINCIPLES OF

THE LAW OF RATING OF HEREDITAMENTS IN THE OCCUPATION OF COMPANIES.

By J. H. BALFOUR BROWNE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND REGISTRAR TO THE RAILWAY COMMISSIONERS.

"The tables and specimen valuations which are printed in an appendix to this volume will be of great service to the parish authorities, and to the legal practitioners who may have to deal with the rating of those properties which are in the occupation of Companies, and we congratulate Mr. Browne on the production of a clear and concise book of the system of Company Rating. There is no doubt

that such a work is much needed, and we are sure that all those who are interested in, or have to do with, public rating, will find it of great service. Much credit is therefore due to Mr. Browne for his able treatise—a work which his experience as Registrar of the Railway Commission peculiarly qualified him to undertake."—*Law Magazine*.

In 8vo, 1875, price 7s. 6d., cloth.

THE LAW OF USAGES & CUSTOMS:

A Practical Law Tract.

By J. H. BALFOUR BROWNE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND REGISTRAR TO THE RAILWAY COMMISSIONERS.

"We look upon this treatise as a valuable addition to works written on the Science of Law."—*Canada Law Journal*.

"As a tract upon a very troublesome department of Law it is admirable—the principles laid down are sound, the illustrations are well chosen, and the decisions and *dicta* are harmonised so far as possible and distinguished when necessary."—*Irish Law Times*.

"As a book of reference we know of none so comprehensive dealing with this particular branch of Common Law. . . . In this way the book is invaluable to the practitioner."—*Law Magazine*.

In one volume, 8vo, 1875, price 18s., cloth,

THE PRACTICE BEFORE THE RAILWAY COMMISSIONERS

UNDER THE REGULATION OF RAILWAY ACTS, 1873 & 1874;

With the Amended General Orders of the Commissioners, Schedule of Forms, and Table of Fees: together with the Law of Undue Preference, the Law of the Jurisdiction of the Railway Commissioners, Notes of their Decisions and Orders, Precedents of Forms of Applications, Answers and Replies, and Appendices of Statutes and Cases.

By J. H. BALFOUR BROWNE,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND REGISTRAR TO THE RAILWAY COMMISSIONERS.

"Mr. Browne's book is handy and convenient in form, and well arranged for the purpose of reference: its treatment of the subject is fully and carefully worked out: it is, so far as we have been able to test it, accurate and trustworthy. It is the

work of a man of capable legal attainments, and by official position intimate with his subject; and we therefore think that it cannot fail to meet a real want and to prove of service to the legal profession and the public."—*Law Magazine*.

In 8vo, 1876, price 7s. 6d., cloth,

ON THE COMPULSORY PURCHASE OF THE UNDERTAKINGS OF COMPANIES BY CORPORATIONS,

And the Practice in Relation to the Passage of Bills for Compulsory Purchase through Parliament. By J. H. BALFOUR BROWNE, of the Middle Temple, Barrister-at-Law; Author of "The Law of Rating," "The Law of Usages and Customs," &c., &c.

"This is a work of considerable importance to all Municipal Corporations, and it is hardly too much to say that every member of these bodies should have a copy by him for constant reference. Probably at no very distant date the property of all the existing gas and water companies will pass under municipal control, and therefore it is exceedingly desirable that the principles and conditions under which such transfers ought to be made should be clearly understood. This task is made easy by the present volume. The stimulus for the publication of such a work was given by the action of the Parliamentary Committee which last session passed the preamble of the 'Stockton and Middlesbrough Corporations Water Bill, 1876.' The volume accordingly contains a full report of the case as it was presented

both by the promoters and opponents, and as this was the first time in which the principle of compulsory purchase was definitely recognised, there can be no doubt that it will long be regarded as a leading case. As a matter of course, many incidental points of interest arose during the progress of the case. Thus, besides the main question of compulsory purchase, and the question as to whether there was or was not any precedent for the Bill, the questions of water compensations, of appeals from one Committee to another, and other kindred subjects were discussed. These are all treated at length by the Author in the body of the work, which is thus a complete legal compendium on the large subject with which it so ably deals."

In 8vo, 1878, price 6s., cloth,

THE

LAW RELATING TO CHARITIES,

ESPECIALLY WITH REFERENCE TO THE VALIDITY AND CONSTRUCTION OF
CHARITABLE BEQUESTS AND CONVEYANCES.

By FERDINAND M. WHITEFORD, of Lincoln's Inn, Barrister-at-Law.

"The Law relating to Charities by F. M. Whiteford contains a brief but clear exposition of the law relating to a class of bequests in which the intentions of donors are often frustrated by unacquaintance with the statutory provisions on the subject. Decisions in reported cases occupy a

large portion of the text, together with the explanations pertinent to them. The general tenor of Mr. Whiteford's work is that of a digest of Cases rather than a treatise, a feature, however, which will not diminish its usefulness for purposes of reference."—*Law Magazine and Review*.

In 8vo, 1872, price 7s. 6d., cloth,

AN EPITOME AND ANALYSIS OF

SAVIGNY'S TREATISE ON OBLIGATIONS IN ROMAN LAW.

By ARCHIBALD BROWN, M.A.

EDIN. AND OXON., AND B.C.L. OXON., OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

"Mr. Archibald Brown deserves the thanks of all interested in the science of Law, whether as a study or a practice, for his edition of Herr von Savigny's great work on 'Obligations.' Mr. Brown has undertaken a double task—the translation of his author, and the analysis of his author's matter. That he has succeeded in reducing the bulk of the original will be seen at a glance; the French translation consisting of two volumes, with some five hundred pages apiece, as compared with Mr. Brown's thin volume of a hundred and

fifty pages. At the same time the pith of Von Savigny's matter seems to be very successfully preserved, nothing which might be useful to the English reader being apparently omitted.

The new edition of Savigny will, we hope, be extensively read and referred to by English lawyers. If it is not, it will not be the fault of the translator and epitomiser. Far less will it be the fault of Savigny himself, whose clear definitions and accurate tests are of great use to the legal practitioner."—*Law Journal*.

THE ELEMENTS OF ROMAN LAW.

In 216 pages 8vo, 1875, price 10s., cloth.

A CONCISE DIGEST OF THE

INSTITUTES OF GAIUS AND JUSTINIAN.

With copious References arranged in Parallel Columns, also Chronological and Analytical Tables, Lists of Laws, &c. &c.

Primarily designed for the Use of Students preparing for Examination at Oxford, Cambridge, and the Inns of Court.

By SEYMOUR F. HARRIS, B.C.L., M.A.,

OF WORCESTER COLLEGE, OXFORD, AND THE INNER TEMPLE, BARRISTER-AT-LAW
AUTHOR OF "UNIVERSITIES AND LEGAL EDUCATION."

"Mr. Harris's digest ought to have very great success among law students both in the Inns of Court and the Universities. His book gives evidence of praiseworthy accuracy and laborious condensation."—*LAW JOURNAL*.

"This book contains a summary in English of the elements of Roman Law as contained in the works of Gaius and Justinian, and is so arranged that the reader can at once see what are the opinions of either of these two writers on each point. From the very exact and accurate references to titles and sections given he can at once refer to the original writers. The concise manner in which Mr. Harris has arranged his digest will render it most useful, not only to the students for whom it was originally written, but also to those persons who, though they have not the time to wade through the larger treatises of *Poste*, *Sanders*, *Ortolan*, and others, yet desire to obtain some knowledge of Roman Law."—*EDINBURGH AND CAMBRIDGE UNDERGRADUATES' JOURNAL*.

Harris deserves the credit of having produced an epitome which will be of service to numerous students who have no time or sufficient ability to analyse the *Institutes* *cloes*."—*LAW TIMES*.

In Crown 8vo, price 3s. ; or Interleaved for Notes, price 4s.

CONTRACT LAW.

QUESTIONS ON THE LAW OF CONTRACTS. WITH NOTES TO THE ANSWERS. Founded on "Anson," "Chitty," and "Pollock."

By PHILIP FOSTER ALDRED, D.C.L., Hertford College and Gray's Inn ; late Examiner for the University of Oxford.

"This appears to us a very admirable selection of questions, comparing favourably with the average run of those set in examinations, and useful for the purpose of testing progress."—*Law Journal*.

For the Preliminary Examinations before Entering into Articles of Clerkship to Solicitors under the Solicitors Act, 1877.

In a handsome 4to volume, with Map of the World, price 10s., cloth,

THE STUDENTS' REMINDER & PUPILS' HELP IN PREPARING FOR A PUBLIC EXAMINATION.

By THOMAS MARSH,

PRIVATE TUTOR, AUTHOR OF AN "ENGLISH GRAMMAR," &c.

"We welcome this compendium with great pleasure as being exactly what is wanted in this age of competitive examinations. It is evidently the work of a master hand, and could only be compiled by one thoroughly experienced in the work of teaching. Mr. Marsh has summarised and analysed the subjects required for the preliminary examinations of law students, as well as for the University and Civil Service examinations. He has paid special attention to mathematics, but the compendium also includes ancient and modern languages, geography, dictation, &c. It was a happy idea to make it quarto size, and the type and printing are clear and legible."—*Irish Law Times*.

Now ready, Second Edition, in 8vo, price 21s., cloth,

ENGLISH CONSTITUTIONAL HISTORY.

FROM THE TEUTONIC INVASION TO THE PRESENT TIME.

Designed as a Text-book for Students and others.

By T. P. TASWELL-LANGMEAD, B.C.L.,

OF LINCOLN'S INN, BARRISTER-AT-LAW, LATE TUTOR ON CONSTITUTIONAL LAW AND LEGAL HISTORY TO THE FOUR INNS OF COURT, AND FORMERLY VINERIAN SCHOLAR IN THE UNIVERSITY OF OXFORD.

Second and Enlarged Edition, revised throughout, and in many parts rewritten.

"The work before us it would be hardly possible to praise too highly. In style, arrangement, clearness, and size, it would be difficult to find anything better on the real history of England, the history of its constitutional growth as a complete story, than this volume."—*Boston (U.S.) Literary World*.

"As it now stands, we should find it hard to name a better text-book on English Constitutional History."—*Solicitors' Journal*.

"That the greatest care and labour have been bestowed upon it is apparent in every page, and we doubt not that it will become a standard work not likely soon to die out."—*Oxford and Cambridge Undergraduates' Journal*.

"As a text-book for the lecturer it is most valuable. It does not always observe a strict chronological sequence, but brings together all that has to be said on a given subject at the point when that subject happens to possess a special importance."—*Contemporary Review*.

"Mr. Taswell-Langmead's compendium of the rise and development of the English Constitution has evidently supplied a want. . . . The present Edition is greatly improved. . . . We have no hesitation in saying that it is a thoroughly good and useful work."—*Spectator*.

"We think Mr. Taswell-Langmead may be congratulated upon having compiled an elementary work of conspicuous merit."—*Pall Mall Gazette*.

"For students of history we do not know any work which we could more thoroughly recommend."—*Law Times*.

"It is a safe, careful, praiseworthy digest and manual of all constitutional history and law."—*Globe*.

"The volume on English Constitutional History, by Mr. Taswell-Langmead, is exactly what such a history should be."—*Standard*.

"As a text-book for students, we regard it as an exceptionally able and complete work."—*Law Journal*.

"Mr. Taswell-Langmead has thoroughly grasped the bearings of his subject. It is, however, in dealing with that chief subject of constitutional history—parliamentary government—that the work exhibits its great superiority over its rivals."—*Academy*.

Sixth Edition, in 8vo, 1882, price 25s., cloth,

THE PRINCIPLES OF EQUITY.

INTENDED FOR THE USE OF STUDENTS AND THE PROFESSION.

By EDMUND H. T. SNELL,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

SIXTH EDITION.

TO WHICH IS ADDED

AN EPITOME OF THE EQUITY PRACTICE.

THIRD EDITION.

By ARCHIBALD BROWN, M.A., EDIN. & OXON., & B.C.L. OXON.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF "A NEW LAW DICTIONARY,"
"AN ANALYSIS OF SAVIGNY ON OBLIGATIONS," AND THE "LAW OF FIXTURES."

REVIEWS.

"On the whole we are convinced that the Sixth Edition of Snell's Equity is destined to be as highly thought of as its predecessors, as it is, in our opinion, out and out the best work on the subject with which it deals."—*Gibson's Law Notes*.

"Rarely has a text-book attained more complete and rapid success than Snell's 'Principles of Equity,' of which a fifth edition has just been issued."—*Law Times*.

"Seldom does it happen that a work secures so great a reputation as this book, and to Mr. Brown is due the credit of keeping it up with the times. . . . It is certainly the most comprehensive as well as the best work on Equity Jurisprudence in existence."—*Oxford and Cambridge Undergraduates' Journal*.

"The changes introduced by the Judicature Acts have been well and fully explained by the present edition of Mr. Snell's treatise, and everything necessary in the way of revision has been conscientiously accomplished. We perceive the fruitful impress of the 'amending hand' in every page; the results of the decisions under the new system have been carefully explained, and engrafted into the original text; and in a word, Snell's work, as edited by Mr. Brown, has proved the fallacy of Bentham's description of Equity as 'that capricious and inconsistent mistress of our fortunes, whose features no one is able to delineate.'"—*Irish Law Times*.

"We know of no better introduction to the *Principles of Equity*."—
CANADA LAW JOURNAL.

"Within the ten years which have elapsed since the appearance of the first edition of this work, its reputation has steadily increased, and it has long since been recognised by students, tutors, and practitioners, as the best elementary treatise on the important and difficult branch of the law which forms its subject."—*Law Magazine and Review*.

In Crown 8vo, price 2s. 6d., sewed.

QUESTIONS ON EQUITY.

FOR STUDENTS PREPARING FOR EXAMINATION,

FOUNDED ON

SNELL'S "PRINCIPLES OF EQUITY,"

By W. T. WAITE,

BARRISTER-AT-LAW, HOLT SCHOLAR OF THE HONOURABLE SOCIETY OF GRAY'S INN.

Second Edition, in one volume, 8vo, price 18s. cloth,

PRINCIPLES OF CONVEYANCING.

AN ELEMENTARY WORK FOR THE USE OF STUDENTS.

By HENRY C. DEANE,

OF LINCOLN'S INN, BARRISTER-AT-LAW, SOMETIME LECTURER TO THE INCORPORATED LAW SOCIETY OF THE UNITED KINGDOM.

"We hope to see this book, like *Snell's Equity*, a standard class-book in all Law Schools where English law is taught."—CANADA LAW JOURNAL.

"We like the work, it is well written and is an excellent student's book, and being only just published, it has the great advantage of having in it all the recent important enactments relating to conveyancing. It possesses also an excellent index."—*Law Students' Journal*.

"Will be found of great use to students entering upon the difficulties of Real Property Law. It has an unusually exhaustive index covering some fifty pages."—*Law Times*.

"In the parts which have been re-written, Mr. Deane has preserved the same pleasant style marked by simplicity and lucidity which distinguished his first edition. After '*Williams on Real Property*,' there is no book which we should so strongly recommend to the student entering upon Real Property Law as Mr. Deane's '*Principles of Conveyancing*,' and the high character which the first edition attained has been fully kept up in this second."—*Law Journal*.

Second Edition, in 8vo, price 10s. 6d., cloth,

A SUMMARY OF THE LAW & PRACTICE IN ADMIRALTY.

FOR THE USE OF STUDENTS.

By EUSTACE SMITH,

OF THE INNER TEMPLE; AUTHOR OF "A SUMMARY OF COMPANY LAW."

"The book is well arranged, and forms a good introduction to the subject."—*Solicitor's Journal*.

"It is however, in our opinion, a well and carefully written little work, and should be in the hands of every student who is taking up Admiralty Law at the Final."—*Law Students' Journal*.

"Mr. Smith has a happy knack of compressing a large amount of useful matter in a small compass. The present work will doubtless be received with satisfaction equal to that with which his previous '*Summary*' has been met."—*Oxford and Cambridge Undergraduates' Journal*.

Second Edition, in 8vo, price 7s., cloth,

A SUMMARY OF THE LAW AND PRACTICE IN THE ECCLESIASTICAL COURTS.

FOR THE USE OF STUDENTS.

By EUSTACE SMITH,

OF THE INNER TEMPLE; AUTHOR OF "A SUMMARY OF COMPANY LAW," AND "A SUMMARY OF THE LAW AND PRACTICE IN ADMIRALTY."

"His object has been, as he tells us in his preface, to give the student and general reader a fair outline of the scope and extent of ecclesiastical law, of the principles on which it is founded, of the Courts by which it is enforced, and the procedure by which these Courts are regulated. We think the book well fulfils its object. Its value is much enhanced by a profuse citation of authorities for the propositions contained in it."—*Bar Examination Journal*.

Second Edition, in 8vo, price 7s., cloth,

AN EPITOME OF THE LAWS OF PROBATE AND DIVORCE, FOR THE USE OF STUDENTS FOR HONOURS EXAMINATION.

By J. CARTER HARRISON, SOLICITOR.

"The work is considerably enlarged, and we think improved, and will be found of great assistance to students."—*Law Students' Journal*.

[Third Edition. In one volume, 8vo. price 25s. cloth.]

PRINCIPLES OF THE COMMON LAW.

INTENDED FOR THE USE OF STUDENTS AND THE PROFESSION.

THIRD EDITION.

By JOHN INDERMAUR, SOLICITOR,

AUTHOR OF "A MANUAL OF THE PRACTICE OF THE SUPREME COURT,"
"EPITOMES OF LEADING CASES," AND OTHER WORKS.

"The present edition of this elementary treatise has been in general edited with praise-worthy care. The provisions of the statutes affecting the subjects discussed, which have been passed since the publication of the last edition, are clearly summarised, and the effect of the leading cases is generally very well given. In the difficult task of selecting and distinguishing principle from detail, Mr. Indermaur has been very successful; the leading principles are clearly brought out, and very judiciously illustrated."—*Solicitors' Journal*.

"The work is acknowledged to be one of the best written and most useful elementary works for Law Students that has been published."—*Law Times*.

"The praise which we were enabled to bestow upon Mr. Indermaur's very useful compilation on its first appearance has been justified by a demand for a second edition."—*Law Magazine*.

"We were able, four years ago, to praise the first edition of Mr. Indermaur's book as likely to be of use to students in acquiring the elements of the law of torts and contracts. The second edition maintains the character of the book."—*Law Journal*.

"Mr. Indermaur renders even law light reading. He not only possesses the faculty of judicious selection, but of lucid exposition and felicitous illustration. And while his works are all thus characterised, his 'Principles of the Common Law' especially displays those features. That it has already reached a second edition, testifies that our estimate of the work on its first appearance was not unduly favourable, highly as we then signified approval; nor needs it that we should add anything to that estimate in reference to the general scope and execution of the work. It only remains to say, that the present edition evinces that every care has been taken to insure thorough accuracy, while including all the modifications in the law that have taken place since the original publication; and that the references to the Irish decisions which have been now introduced are calculated to render the work of greater utility to practitioners and students, both English and Irish."—*Irish Law Times*.

"This work, the author tells us in his Preface, is written mainly with a view to the examinations of the Incorporated Law Society; but we think it is likely to attain a wider usefulness. It seems, so far as we can judge from the parts we have examined, to be a careful and clear outline of the principles of the common law. It is very readable; and not only students, but many practitioners and the public might benefit by a perusal of its pages."—*SOLICITORS' JOURNAL*.

Third Edition, in 8vo, price 12s., cloth,

A MANUAL OF THE PRACTICE OF THE SUPREME COURT OF JUDICATURE,

In the Queen's Bench and Chancery Divisions. Adapted to the New Rules of Practice, 1883. Intended for the use of Students.

By JOHN INDERMAUR, Solicitor.

"The second edition has followed quickly upon the first, which was published in 1878. This fact affords good evidence that the book has been found useful. It contains sufficient information to enable the student who masters the contents to turn to the standard works on practice with advantage."—*Law Times*.
 "This is a very useful student's book. It is clearly written, and gives such information as the student requires, without bewildering him with details. The portion relating to the Chancery Division forms an excellent introduction to the elements of the practice, and may be advantageously used, not only by articulated clerks, but also by pupils entering the chambers of equity draftsmen."—*Solicitors' Journal*.

Fifth Edition, in 8vo, price 6s., cloth,

AN EPITOME OF LEADING COMMON LAW CASES; WITH SOME SHORT NOTES THEREON.

Chiefly intended as a Guide to "SMITH'S LEADING CASES." By JOHN INDERMAUR, Solicitor (Clifford's Inn) & Prizeman, Michaelmas Term, 1872).

"We have received the third edition of the 'Epitome of Leading Common Law Cases,' by Mr. Indermaur, Solicitor. The first edition of this work was published in February, 1873, the second in April, 1874, and now we have a third edition dated September, 1875. No better proof of the value of this book can be furnished than the fact that in less than three years it has reached a third edition."—*Law Journal*.

Fourth Edition, in 8vo, 1881, price 6s., cloth,

AN EPITOME OF LEADING CONVEYANCING AND EQUITY CASES; WITH SOME SHORT NOTES THEREON, FOR THE USE OF STUDENTS.

By JOHN INDERMAUR, Solicitor, Author of "An Epitome of Leading Common Law Cases."

"We have received the second edition of Mr. Indermaur's very useful Epitome of Leading Conveyancing and Equity Cases. The work is very well done."—*Law Times*.

"The Epitome well deserves the continued patronage of the class—Students—for whom it is especially intended. Mr. Indermaur will soon be known as the 'Students' Friend.'"—*Canada Law Journal*.

Third Edition, in 8vo, 1880, price 5s., cloth,

SELF-PREPARATION FOR THE FINAL EXAMINATION. CONTAINING A COMPLETE COURSE OF STUDY, WITH STATUTES, CASES AND QUESTIONS;

And intended for the use of those Articled Clerks who read by themselves.

By JOHN INDERMAUR, Solicitor.

"In this edition Mr. Indermaur extends his counsels to the whole period from the intermediate examination to the final. His advice is practical and sensible; and if the course of study he recommends is intelligently followed, the articled clerk will have laid in a store of legal knowledge more than sufficient to carry him through the final examination."—*Solicitors' Journal*.

"This book contains recommendations as to how a complete course of study for the above examination should be carried out, with reference to the particular books to be read *seriatim*. We need only remark that it is essential for a student to be set on the right track in his reading, and that anyone of ordinary ability, who follows the course set out by Mr. Indermaur, ought to pass with great credit."—*Law Journal*.

Second Edition, in 8vo, price 6s., cloth,

SELF-PREPARATION FOR THE INTERMEDIATE EXAMINATION,

As it at present exists on Stephen's Commentaries. Containing a complete course of Study, with Statutes, Questions, and Advice as to portions of the book which may be omitted, and of portions to which special attention should be given; also the whole of the Questions and Answers at the nine Intermediate Examinations which have at present been held on Stephen's Commentaries, and intended for the use of all Articled Clerks who have not yet passed the Intermediate Examination. By JOHN INDERMAUR, Author of "Principles of Common Law," and other works.

In 8vo, 1875, price 6s., cloth,

THE STUDENTS' GUIDE TO THE JUDICATURE ACTS,

AND THE RULES THEREUNDER:

Being a book of Questions and Answers intended for the use of Law Students.

By JOHN INDERMAUR, Solicitor.

Second Edition. In 8vo, price 26s., cloth,

A NEW LAW DICTIONARY,

AND INSTITUTE OF THE WHOLE LAW;

EMBRACING FRENCH AND LATIN TERMS AND REFERENCES TO THE
AUTHORITIES, CASES, AND STATUTES.

SECOND EDITION, revised throughout, and considerably enlarged.

By ARCHIBALD BROWN,

M.A. EDIN. AND OXON., AND B.C.L. OXON., OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW; AUTHOR OF
THE "LAW OF FIXTURES," "ANALYSIS OF SAVIGNY'S OBLIGATIONS IN ROMAN LAW," ETC.

Reviews of the Second Edition.

"So far as we have been able to examine the work, it seems to have been most carefully and accurately executed, the present Edition, besides containing much new matter, having been thoroughly revised in consequence of the recent changes in the law; and we have no doubt whatever that it will be found extremely useful, not only to students and practitioners, but to public men, and men of letters."—IRISH LAW TIMES.

"Mr. Brown has revised his Dictionary, and adapted it to the changes effected by the Judicature Acts, and it now constitutes a very useful work to put into the hands of any student or articulated clerk, and a work which the practitioner will find of value for reference."—SOLICITORS' JOURNAL.

"It will prove a reliable guide to law students, and a handy book of reference for practitioners."—LAW TIMES.

In Royal 8vo., price 5s., cloth,

ANALYTICAL TABLES

OF

THE LAW OF REAL PROPERTY;

Drawn up chiefly from STEPHEN'S BLACKSTONE, with Notes.

By C. J. TARRING, of the Inner Temple, Barrister-at-Law.

CONTENTS.

TABLE I. Tenures.	TABLE V. Uses.
" II. Estates, according to quantity of Tenants' Interest.	" VI. Acquisition of Estates in land of freehold tenure.
" III. Estates, according to the time at which the Interest is to be enjoyed.	" VII. Incorporeal Hereditaments.
" IV. Estates, according to the number and connection of the Tenants.	" VIII. Incorporeal Hereditaments.

"Will supply the law student with help of a kind found very generally useful. The tables, which are based on Stephen's Blackstone, have gone through the practical test of being employed as aids to the mental arrangement of the knowledge of the subject required for examinations, and will no doubt be appreciated by the large and increasing classes whose requirements they are intended to meet."—*Law Magazine*.

"Great care and considerable skill have been shown in the compilation of these tables, which will be of much service to students of the Law of Real Property."—*Law Times*.

Second Edition, in 8vo, price 20s., cloth.

PRINCIPLES OF THE CRIMINAL LAW.

INTENDED AS A LUCID EXPOSITION OF THE SUBJECT FOR THE USE
OF STUDENTS AND THE PROFESSION.

BY SEYMOUR F. HARRIS, B.C.L., M.A. (OXON.),

AUTHOR OF "A CONCISE DIGEST OF THE INSTITUTES OF GAIVS AND JUSTINIAN."

SECOND EDITION.

REVISED BY THE AUTHOR AND F. P. TOMLINSON, M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

REVIEWS.

"The favourable opinion we expressed of the first edition of this work appears to have been justified by the reception it has met with. Looking through this new Edition, we see no reason to modify the praise we bestowed on the former Edition. The recent cases have been added and the provisions of the Summary Jurisdiction Act are noticed in the chapter relating to Summary Convictions. The book is one of the best manuals of Criminal Law for the student."—SOLICITORS' JOURNAL.

"There is no lack of Works on Criminal Law, but there was room for such a useful handbook of Principles as Mr. Seymour Harris has supplied. Accustomed, by his previous labours, to the task of analysing the law, Mr. Harris has brought to bear upon his present work qualifications well adapted to secure the successful accomplishment of the object which he had set before him. That object is not an ambitious one, for it does not pretend to soar above utility to the young practitioner and the student. For both these classes, and for the yet wider class who may require a book of reference on the subject, Mr. Harris has produced a clear and convenient Epitome of the Law. A noticeable feature of Mr. Harris's work, which is likely to prove of assistance both to the practitioner and the student, consists of a Table of Offences, with their legal character, their punishment, and the statute under which it is inflicted, together with a reference to the pages where a Statement of the Law will be found."—LAW MAGAZINE AND REVIEW.

"This work purports to contain 'a concise exposition of the nature of crime, the various offences punishable by the English law; the law of criminal procedure, and the law of summary convictions,' with tables of offences, punishments, and statutes. The work is divided into four books. Book I. treats of crime, its divisions and essentials; of persons capable of committing crimes; and of principals and accessories. Book II. deals with offences of a public nature; offences against private persons; and offences against the property of individuals. Each crime is discussed in its turn, with as much brevity as could well be used consistently with a proper explanation of the legal characteristics of the several offences. Book III. explains criminal procedure, including the jurisdiction of Courts, and the various steps in the apprehension and trial of criminals from arrest to punishment. This part of the work is extremely well done, the description of the trial being excellent, and thoroughly calculated to impress the mind of the uninitiated. Book IV. contains a short sketch of 'summary convictions before magistrates out of quarter sessions.' The table of offences at the end of the volume is most useful, and there is a very full index. Altogether we must congratulate Mr. Harris on his adventure."—Law Journal.

"Mr. Harris has undertaken a work, in our opinion, so much needed that he might diminish its bulk in the next edition by obliterating the apologetic preface. The appearance of his volume is as well timed as its execution is satisfactory. The author has shown an ability of omission which is a good test of skill, and from the overwhelming mass of the criminal law he has discreetly selected just so much only as a learner needs to know, and has presented it in terms which render it capable of being easily taken into the mind. The first half of the volume is devoted to indictable offences, which are defined and explained in succinct terms; the second half treats of the prevention of offences, the courts of criminal jurisdiction, arrest, preliminary proceedings before magistrates, and modes of prosecuting and trial; and a brief epitome of the laws of evidence, proceedings after trial, and summary convictions, with a table of offences, complete the book. The part on procedure will be found particularly useful. Few young counsel, on their first appearance at sessions, have more than a loose and general notion of the manner in which a trial is conducted, and often commit blunders which, although trifling in kind, are nevertheless seriously discouraging and annoying to themselves at the outset of their career. From even such a blunder as that of mistaking the order in which the speeches are made and witnesses examined they may be saved by the table of instructions given here."—SOLICITORS' JOURNAL.

Now Ready, in 12mo, price 5s. 6d., cloth,

A CONCISE TREATISE ON THE LAW OF BILLS OF SALE,

FOR THE USE OF LAWYERS, LAW STUDENTS, & THE PUBLIC.

Embracing the Acts of 1878 and 1882. Part I.—Of Bills of Sale generally. Part II.—Of the Execution, Attestation, and Registration of Bills of Sale and satisfaction thereof. Part III.—Of the Effects of Bills of Sale as against Creditors. Part IV.—Of Seizing under, and Enforcing Bills of Sale. Appendix, Forms, Acts, &c. By JOHN INDERMAUR, Solicitor.

"The object of the book is thoroughly practical. Those who want to be told exactly what to do and where to go when they are registering a bill of sale will find the necessary information in this little book."
—*Law Journal*.

Now ready, in 8vo, price 2s. 6d., cloth,

A COLLECTION OF LATIN MAXIMS,

LITERALLY TRANSLATED.

INTENDED FOR THE USE OF STUDENTS FOR ALL LEGAL EXAMINATIONS.

"The book seems admirably adapted as a book of reference for students who come across a Latin maxim in their reading."—*Law Journal*.

"The collection before us is not pretentious, and disarms criticism by its simplicity and general correctness. Students would do well, early in their studies, to commit these maxims to memory, and subsequent reading will often be systematized and more easily remembered."—*Canada Law Journal*.

In one volume, 8vo, price 9s., cloth,

LEADING STATUTES SUMMARISED,

FOR THE USE OF STUDENTS.

By ERNEST C. THOMAS,

BACON SCHOLAR OF THE HON. SOCIETY OF GRAY'S INN, LATE SCHOLAR OF TRINITY COLLEGE, OXFORD;
AUTHOR OF "LEADING CASES IN CONSTITUTIONAL LAW BRIEFLY STATED."

"Will doubtless prove of much use to students, for whom it is intended. . . . Any student who, with this brief summary as a guide, carefully studies the enactments themselves in the Revised Edition of the Statutes, cannot fail to gain a very considerable acquaintance with every branch of English law."—*Law Magazine*.

Second Edition, in 8vo, in preparation.

LEADING CASES IN CONSTITUTIONAL LAW

BRIEFLY STATED, WITH INTRODUCTION, EXCURSUSES, AND NOTES.

By ERNEST C. THOMAS,

BACON SCHOLAR OF THE HON. SOCIETY OF GRAY'S INN, LATE SCHOLAR OF TRINITY COLLEGE, OXFORD.

"Mr. E. C. Thomas has put together in a slim octavo a digest of the principal cases illustrating Constitutional Law, that is to say, all questions as to the rights or authority of the Crown or persons under it, as regards not merely the constitution and structure given to the governing body, but also the mode in which the sovereign power is to be exercised. In an introductory essay Mr. Thomas gives a very clear and intelligent survey of the general functions of the Executive, and the principles by which they are regulated; and then follows a summary of leading cases."—*Saturday Review*.

"Mr. Thomas gives a sensible introduction and a brief epitome of the familiar leading cases."—*Law Times*.

In 8vo, price 8s., cloth,

AN EPITOME OF HINDU LAW CASES. With

Short Notes thereon. And Introductory Chapters on Sources of Law, Marriage, Adoption, Partition, and Succession. By WILLIAM M. P. COGLAN, Bombay Service, late Judge and Sessions Judge of Tanna.

In a neat Pocket Volume, crown 12mo, price ., cloth,

THE BANKRUPTCY ACT, 1883,
TOGETHER WITH THE GENERAL RULES AND ORDERS IN
BANKRUPTCY.

WITH NOTES, REFERENCES, AND A COPIOUS INDEX.

By WILLIAM HAZLITT, ESQ.,

SENIOR REGISTRAR OF THE COURT OF BANKRUPTCY, AND

RICHARD RINGWOOD,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW, AND AUTHOR OF THE "PRINCIPLES
OF BANKRUPTCY."

EUROPEAN ARBITRATION.

Part I., price 7s. 6d., sewed,

LORD WESTBURY'S DECISIONS.

REPORTED BY FRANCIS S. REILLY,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

ALBERT ARBITRATION.

Parts I., II., and III., price 25s., sewed,

LORD CAIRNS'S DECISIONS.

REPORTED BY FRANCIS S. REILLY,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

In 8vo, price 21s., cloth,

A TREATISE ON

**THE STATUTES OF ELIZABETH AGAINST
FRAUDULENT CONVEYANCES.**

THE BILLS OF SALE REGISTRATION ACTS AND THE LAW OF VOLUNTARY
DISPOSITIONS OF PROPERTY GENERALLY.

By H. W. MAY, B.A. (Ch. Ch. Oxford),

AND OF LINCOLN'S INN, BARRISTER-AT-LAW.

"This treatise has not been published before it was wanted. The statutes of Elizabeth against fraudulent conveyances have now been in force for more than three hundred years. The decisions under them are legion in number, and not at all times consistent with each other. An attempt to reduce the mass of decisions into something like shape, and the exposition of legal principles involved in the decisions, under any circumstances, must have been a work of great labour, and we are pleased to observe that in the book before us there has been a combination of unusual labour with considerable professional skill. . . . We cannot conclude our notice of this work without saying that it reflects great credit on the publishers as well as the author. The facilities afforded by Messrs. Stevens and Haynes for the publication of treatises by rising men in our profession are deserving of all praise. We feel assured that they do not lightly lend their aid to works presented for publication, and that in consequence publication by such a firm is to some extent a guarantee of the value of the work published."—*Canada Law Journal*.

"Examining Mr. May's book, we find it constructed with an intelligence and precision which render it entirely worthy of being accepted as a guide in this confessedly difficult subject. The subject is an involved one, but with clean and clear handling it is here presented as clearly as it could be. . . . On the whole, he has produced a very useful book of an exceptionally scientific character."—*Solicitors' Journal*.

"The subject and the work are both very good. The former is well chosen, new, and interesting; the latter has the quality which always distinguishes original research from borrowed labours."—*American Law Review*.

"We are happy to welcome his (Mr. May's) work as an addition to the, we regret to say, brief catalogue of law books conscientiously executed. We can corroborate his own description of his labours, 'that no pains have been spared to make the book as concise and practical as possible, without doing so at the expense of perspicuity, or by the omission of any important points.'"—*Law Times*.

In one volume, 8vo, price 25s., cloth,

AN ESSAY ON
THE RIGHTS OF THE CROWN
AND THE PRIVILEGES OF THE SUBJECT
IN THE SEA SHORES OF THE REALM.

By ROBERT GREAM HALL,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

SECOND EDITION.

REVISED AND CORRECTED, TOGETHER WITH EXTENSIVE ANNOTATIONS,
AND REFERENCES TO THE LATER AUTHORITIES IN ENGLAND,
SCOTLAND, IRELAND, AND THE UNITED STATES.

By RICHARD LOVELAND LOVELAND,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"This is an interesting and valuable book. It treats of one of those obscure branches of the law which there is no great inducement for a legal writer to take up. . . . Mr. Hall, whose first edition was issued in 1830, was a writer of considerable power and method. Mr. Loveland's editing reflects the valuable qualities of the 'Essay' itself. He has done his work without pretension, but in a solid and efficient manner. The 'Summary of Contents' gives an admirable epitome of the chief points discussed in the 'Essay,' and indeed, in some twenty propositions, supplies a useful outline of the whole law. Recent cases are noted at the foot of each page with great care and accuracy; while an Appendix contains much valuable matter; including Lord Hale's treatise *De Jure Maris*, about which there has been so much controversy, and Serjeant Merewether's learned argument on the rights in the river Thames. The book will, we think, take its place as the modern authority on the subject."—*Law Journal*.

"The treatise, as originally published, was one of considerable value, and has ever since been quoted as a standard authority. But as time passed, and cases accumulated, its value diminished, as it was

necessary to supplement it so largely by reference to cases since decided. A tempting opportunity was, therefore, offered to an intelligent editor to supply this defect in the work, and Mr. Loveland has seized it, and proved his capacity in a very marked manner. As very good specimens of annotation, showing clear judgment in selection, we may refer to the subject of alluvion at page 109, and the rights of fishery at page 50. At the latter place he begins his notes by stating under what expressions a 'several fishery' has been held to pass, proceeding subsequently to the evidence which is sufficient to support a claim to ownership of a fishery. The important question under what circumstances property can be acquired in the soil between high and low water mark is lucidly discussed at page 77, whilst at page 81 we find a pregnant note on the property of a grantee of wreck in goods stranded within his liberty.

"We think we can promise Mr. Loveland the reward for which alone he says he looks—that this edition of Hall's Essay will prove a most decided assistance to those engaged in cases relating to the foreshores of the country."—*Law Times*.

"The entire book is masterly."—ALBANY LAW JOURNAL.

In one volume, 8vo, price 12s., cloth,

A TREATISE ON THE LAW RELATING TO THE
POLLUTION AND OBSTRUCTION OF WATER COURSES;

TOGETHER WITH A BRIEF SUMMARY OF THE VARIOUS SOURCES OF RIVERS
POLLUTION.

By CLEMENT HIGGINS, M.A., F.C.S., ..

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"As a compendium of the law upon a special and rather intricate subject, this treatise cannot but prove of great practical value, and more especially to those who have to advise upon the institution of proceedings under the Rivers Pollution Preventive Act, 1876, or to adjudicate upon those proceedings when brought."—*Irish Law Times*.

"We can recommend Mr. Higgins' Manual as the best guide we possess."—*Public Health*.

"County Court Judges, Sanitary Authorities, and Riparian Owners will find in Mr. Higgins' Treatise a valuable aid in obtaining a clear notion of the Law on the Subject. Mr. Higgins has accomplished a work for which he will readily be recognised as having special fitness, on account of

his practical acquaintance both with the scientific and the legal aspects of his subject."—*Law Magazine and Review*.

"The volume is very carefully arranged throughout, and will prove of great utility both to miners and to owners of land on the banks of rivers."—*The Mining Journal*.

"Mr. Higgins writes tersely and clearly, while his facts are so well arranged that it is a pleasure to refer to his book for information; and altogether the work is one which will be found very useful by all interested in the subject to which it relates."—*Engineer*.

"A compact and convenient manual of the law on the subject to which it relates."—*Solicitors' Journal*.

In 8vo, THIRD EDITION, price 25s., cloth,

MAYNE'S TREATISE ON THE LAW OF DAMAGES.

THIRD EDITION.

BY

JOHN D. MAYNE,

OF THE INNER TEMPLE, BARRISTER-AT-LAW;

AND

LUMLEY SMITH,

OF THE INNER TEMPLE, Q.C.

"During the twenty-two years which have elapsed since the publication of this well-known work, its reputation has been steadily growing, and it has long since become the recognised authority on the important subject of which it treats."—LAW MAGAZINE AND REVIEW.

"This edition of what has become a standard work has the advantage of appearing under the supervision of the original author as well as of Mr. Lumley Smith, the editor of the second edition. The result is most satisfactory. Mr. Lumley Smith's edition was ably and conscientiously prepared, and we are glad to find that the reader still enjoys the benefit of his accuracy and learning. At the same time the book has doubtless been improved by the reappearance of its author as co-editor. The earlier part, indeed, has been to a considerable extent entirely rewritten.

"Upon the general principles, according to which damages are to be assessed in actions of contract, *Hadley v. Baxendale* (9 Ex. 341) still remains the leading authority, and furnishes the text for the discussion contained in the second chapter of Mr. Mayne's book. Properly understood and limited, the rule proposed in that case, although in one respect not very happily worded, is a sound one, and has been repeatedly approved both in England and America. The subsequent decisions, which are concisely summarized by Mr. Mayne, have established that mere knowledge of special circumstances is not enough, unless it can be inferred from the whole transaction that the contractor consented to become liable to the extra damage. This limitation is obviously just, especially in the case of persons, such as common carriers, who have no option to refuse the contract. Mere knowledge on their part of special circumstances ought not, and, according to the *dicta* of the judges in the Exchequer Chamber in *Horne v. Midland Railway Company* (21 W. R. 481, L. R. 8 C. P. 131), would not involve the carrier in additional responsibility. Mr. Mayne's criticism of the numerous cases in which this matter has been considered leaves nothing to be desired, and the rules he deduces therefrom (pp. 32, 33) appear to us to exhaust the subject.

"Mr. Mayne's remarks on damages in actions of tort are brief. We agree with him that in such actions the courts are governed by far looser principles than in contracts; indeed, sometimes it is impossible to say they are governed by any principles at all. In actions for injuries to the person or reputation, for example, a judge cannot do more than give a general direction to the jury to give what the facts proved in their judgment required. And, according to the better opinion they may give damages 'for example's sake,' and mulct a rich man more heavily than a poor one. In actions for injuries to property, however, 'vindictive' or 'exemplary' damages cannot, except in very rare cases, be awarded, but must be limited, as in contract, to the actual harm sustained.

"The subject of remoteness of damage is treated at considerable length by Mr. Mayne, and we notice that much new matter has been added. Thus the recent case of *Riding v. Smith* (24 W. R. 487, 1 Ex. D. 91) furnishes the author with an opportunity of discussing the well-known rule in *Ward v. Weeks* (7 Bing. 211) that injury resulting from the repetition of a slander is not actionable. The rule has always seemed to us a strange one, if a man is to be made responsible for the natural consequences of his acts. For everyone who utters a slander may be perfectly certain that it will be repeated.

"It is needless to comment upon the arrangement of the subjects in this edition, in which no alteration has been made. The editors modestly express a hope that all the English as well as the principal Irish decisions up to the date have been included, and we believe from our own examination that the hope is well founded. We may regret that, warned by the growing bulk of the book, the editors have not included any fresh American cases, but we feel that the omission was unavoidable. We should add that the whole work has been thoroughly revised."—*Solicitors' Journal*.

"This text-book is so well known, not only as the highest authority on the subject treated of, but as one of the best text-books ever written, that it would be idle for us to speak of it in the words of commendation that it deserves. It is a work that no practising lawyer can do without."—CANADA LAW JOURNAL.

In 8vo, price 2s., sewed,

TABLE of the FOREIGN MERCANTILE LAWS and CODES

in Force in the Principal States of EUROPE and AMERICA. By CHARLES LYON-CAEN, Professeur agrégé à la Faculté de Droit de Paris; Professeur à l'Ecole libre des Sciences politiques. Translated by NAPOLEON ARGLES, Solicitor, Paris.

In one volume, demy 8vo, price 10s. 6d., cloth,

PRINCIPLES OF THE LAW OF STOPPAGE IN TRANSITU, RETENTION, AND DELIVERY.

By JOHN HOUSTON, of the Middle Temple, Barrister-at-Law.

"We have no hesitation in saying that we think Mr. Houston's book will be a very useful accession to the library of either the merchant or the lawyer."
—*Solicitors' Journal*.

"We have, indeed, met with few works which so

successfully surmount the difficulties in the way of this arduous undertaking as the one before us; for the language is well chosen, it is exhaustive of the law, and is systematised with great method."
—*American Law Review*.

In 8vo, price 10s. 6d., cloth,

A REPORT OF THE CASE OF

THE QUEEN v. GURNEY AND OTHERS,

In the Court of Queen's Bench before the Lord Chief Justice COCKBURN. With an Introduction, containing a History of the Case, and an Examination of the Cases at Law and Equity applicable to it; or Illustrating THE DOCTRINE OF COMMERCIAL FRAUD. By W. F. FINLASON, Barrister-at-Law.

"It will probably be a very long time before the prosecution of the Overend and Gurney directors is forgotten. It remains as an example, and a legal precedent of considerable value. It involved the immensely important question where innocent misrepresentation ends, and where fraudulent misrepresentation begins.

"All who perused the report of this case in the columns of the *Times* must have observed the remarkable fulness and accuracy with which that

duty was discharged, and nothing could be more natural than that the reporter should publish a separate report in book form. This has been done, and Mr. Finlason introduces the report by one hundred pages of dissertation on the general law. To this we shall proceed to refer, simply remarking, before doing so, that the charge to the jury has been carefully revised by the Lord Chief Justice."
—*Law Times*.

12mo, price 10s. 6d., cloth,

A TREATISE ON THE GAME LAWS OF ENGLAND AND WALES:

Including Introduction, Statutes, Explanatory Notes, Cases, and Index. By JOHN LOCKE, M.P., Q.C., Recorder of Brighton. The Fifth Edition, in which are introduced the GAME LAWS of SCOTLAND and IRELAND. By GILMORE EVANS, of the Inner Temple, Barrister-at-Law.

In royal 8vo, price 10s. 6d., cloth,

THE PRACTICE OF EQUITY BY WAY OF REVIVOR AND SUPPLEMENT.

With Forms of Orders and Appendix of Bills.

By LOFTUS LEIGH PEMBERTON, of the Chancery Registrar's Office.

"Mr. Pemberton has, with great care, brought together and classified all these conflicting cases, and has, as far as may be, deduced principles which

will probably be applied to future cases."
—*Solicitors' Journal*.

In 8vo, price 5s., cloth,

THE LAW OF PRIORITY.

A CONCISE VIEW OF THE LAW RELATING TO PRIORITY OF INCUMBRANCES AND OF OTHER RIGHTS IN PROPERTY.

By W. G. ROBINSON, M.A., Barrister-at-Law.

"Mr. Robinson's book may be recommended to the advanced student, and will furnish the practi-

tioner with a useful supplement to larger and more complete works."
—*Solicitors' Journal*.

In crown 8vo, price 16s., cloth,

A MANUAL OF THE PRACTICE OF PARLIAMENTARY ELECTIONS THROUGHOUT GREAT BRITAIN AND

IRELAND. Comprising the Duties of Returning Officers and their Deputies, Town Clerks, Agents, Poll-Clerks, &c., and the Law of Election Expenses, Corrupt Practices, and illegal Payments. With an Appendix of Statutes and an Index. By HENRY JEFFREYS BUSHBY, Esq., one of the Metropolitan Police Magistrates, sometime Recorder of Colchester.—Fifth Edition. Adapted to and embodying the recent changes in the Law, including the Ballot Act, the Instructions to Returning Officers in England and Scotland issued by the Home Office, and the whole of the Statute Law relating to the subject. Edited by HENRY HARDCASTLE, of the Inner Temple, Barrister-at-Law.

We have just received at a very opportune moment the new edition of this useful work. We need only say that those who have to do with elections will find 'Bushby's Manual' replete with information and trustworthy, and that Mr. Hardcastle has incorporated all the recent changes of the law.—*Law Journal*.

"As far as we can judge, Mr. Hardcastle, who

is known as one of the joint editors of O'Malley and Hardcastle's Election Reports, has done his work well. . . . For practical purposes, as a handy manual, we can recommend the work to returning officers, agents, and candidates; and returning officers cannot do better than distribute this manual freely amongst their subordinates, if they wish them to understand their work."—*Solicitors' Journal*.

A Companion Volume to the above, in crown 8vo, price 9s., cloth,

THE LAW AND PRACTICE OF ELECTION PETITIONS,

With an Appendix containing the Parliamentary Elections Act, 1868, the General Rules for the Trial of Election Petitions in England, Scotland, and Ireland, Forms of Petitions, &c. Second Edition. By HENRY HARDCASTLE, of the Inner Temple, Barrister-at-Law.

"Mr. Hardcastle gives us an original treatise with foot notes, and he has evidently taken very considerable pains to make his work a reliable guide. Beginning with the effect of the Election Petitions Act, 1868, he takes his readers step by step through the new procedure. His mode of treating the subject of 'particulars' will be found

extremely useful, and he gives all the law and practice in a very small compass. In an Appendix is supplied the Act and the Rules. We can thoroughly recommend Mr. Hardcastle's book as a concise manual on the law and practice of election petitions."—*Law Times*.

Now ready, Vols. I., II., & III., price 73s.; and Vol. IV., Pts. I. & II., price 5s.

REPORTS OF THE DECISIONS OF THE

JUDGES FOR THE TRIAL OF ELECTION PETITIONS

IN ENGLAND AND IRELAND.

PURSUANT TO THE PARLIAMENTARY ELECTIONS ACT, 1868.

By EDWARD LOUGHLIN O'MALLEY AND HENRY HARDCASTLE.

In 8vo, price 12s., cloth,

THE LAW OF FIXTURES,

IN THE PRINCIPAL RELATION OF
LANDLORD AND TENANT,

AND IN ALL OTHER OR GENERAL RELATIONS.

FOURTH EDITION.

By ARCHIBALD BROWN, M.A. Edin. and Oxon., and B.C.L. Oxon.,

OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

"The author tells us that every endeavour has been made to make this Edition as complete as possible. We think he has been very successful. For instance, the changes effected by the Bills of Sale Act, 1878, have been well indicated, and a new chapter has been added with reference to the Law of Ecclesiastical Fixtures and Dilapidations. The book is worthy of the success it has achieved."—*Law Times*.

"We have touched on the principal features of this

new edition, and we have not space for further remarks on the book itself: but we may observe that the particular circumstances of the cases cited are in all instances sufficiently detailed to make the principle of law clear; and though very many of the principles given are in the very words of the judges, at the same time the author has not spared to deduce his own observations, and the treatise is commendable as well for originality as for laboriousness."—*Law Journal*.

Sicbena and Haynes' Series of Reprints of the Early Reporters.

SIR BARTHOLOMEW SHOWER'S PARLIAMENTARY CASES.

In 8vo, 1876, price 4*l.* 4*s.*, best calf binding,

SHOWER'S CASES IN PARLIAMENT

RESOLVED AND ADJUDGED UPON PETITIONS & WRITS OF ERROR.

FOURTH EDITION.

CONTAINING ADDITIONAL CASES NOT HITHERTO REPORTED.

REVISED AND EDITED BY

RICHARD LOVELAND LOVELAND,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; EDITOR OF "KELYNG'S CROWN CASES," AND
"HALL'S ESSAY ON THE RIGHTS OF THE CROWN IN THE SEASHORE."

"Messrs. STEVENS & HAYNES, the successful publishers of the Reprints of Bellewe, Cooke, Cunningham, Brookes's New Cases, Choyce Cases in Chancery, William Kelynge and Kelyng's Crown Cases, determined to issue a new or fourth Edition of Shower's Cases in Parliament.

"The volume, although beautifully printed on old-fashioned Paper, in old-fashioned type, instead of being in the quarto, is in the more convenient octavo form, and contains several additional cases not to be found in any of the previous editions of the work.

"These are all cases of importance, worthy of being ushered into the light of the world by enterprising publishers.

"Shower's Cases are models for reporters, even in our day. The statements of the case, the arguments of counsel, and the opinions of the Judges, are all clearly and ably given.

"This new edition with an old face of these valuable reports, under the able editorship of R. L. Loveland, Esq., should, in the language of the advertisement, 'be welcomed by the profession, as well as enable the custodians of public libraries to complete or add to their series of English Law Reports.'"—*Canada Law Journal*.

BELLEWE'S CASES, T. RICHARD II.

In 8vo, 1869, price 3*l.* 3*s.*, bound in calf antique,

LES ANS DU ROY RICHARD LE SECOND.

Collect' ensembl' hors les abridgments de Statham, Fitzherbert et Brooke. Per RICHARD BELLEWE, de Lincolns Inne. 1585. Reprinted from the Original Edition.

"No public library in the world, where English law finds a place, should be without a copy of this edition of Bellewe."—*Canada Law Journal*.

"We have here a *fac-simile* edition of Bellewe, and it is really the most beautiful and admirable reprint that has appeared at any time. It is a perfect gem of antique printing, and forms a most interesting monument of our early legal history. It belongs to the same class of works as the Year Book of Edward I. and other similar works which have been printed in our own time under the auspices of the Master of the Rolls; but is far superior to any of them, and is in this respect

highly creditable to the spirit and enterprise of private publishers. The work is an important link in our legal history; there are no year books of the reign of Richard II., and Bellewe supplied the only substitute by carefully extracting and collecting all the cases he could find, and he did it in the most convenient form—that of alphabetical arrangement in the order of subjects, so that the work is a digest as well as a book of law reports. It is in fact a collection of cases of the reign of Richard II., arranged according to their subjects in alphabetical order. It is therefore one of the most intelligible and interesting legal memorials of the Middle Ages."—*Law Times*.

CUNNINGHAM'S REPORTS.

In 8vo, 1871, price 3*l.* 3*s.*, calf antique,

CUNNINGHAM's (T.) Reports in K. B., 7 to 10 Geo. II.; to which is prefixed a Proposal for rendering the Laws of England clear and certain, humbly offered to the Consideration of both Houses of Parliament. Third edition, with numerous Corrections. By THOMAS TOWNSEND BUCKNILL, Barrister-at-Law.

"The instructive chapter which precedes the cases, entitled 'A proposal for rendering the Laws of England clear and certain,' gives the volume a degree of peculiar interest, independent of the value of many of the reported cases. That chapter begins with words which ought, for the information of every people, to be printed in letters of gold. They are as follows: 'Nothing conduces more to the

peace and prosperity of every nation than good laws and the due execution of them.' The history of the civil law is then rapidly traced. Next a history is given of English Reporters, beginning with the reporters of the Year Books from 1 Edw. III. to 12 Hen. VIII.—being near 200 years—and afterwards to the time of the author."—*Canada Law Journal*.

Stevens and Haynes' Series of Reprints of the Early Reporters.

CHOYCE CASES IN CHANCERY.

In 8vo, 1870, price 2l. 2s., calf antique,

THE PRACTICE OF THE HIGH COURT OF CHANCERY.

With the Nature of the several Offices belonging to that Court. And the Reports of many Cases wherein Relief hath been there had, and where denied.

"This volume, in paper, type, and binding (like "Bellewe's Cases") is a fac-simile of the antique edition. All who buy the one should buy the other."—*Canada Law Journal*.

In 8vo, 1872, price 3l. 3s., calf antique,

SIR G. COOKE'S COMMON PLEAS REPORTS

IN THE REIGNS OF QUEEN ANNE, AND KINGS GEORGE I. AND II.

The Third Edition, with Additional Cases and References contained in the Notes taken from L. C. J. EYRE'S MSS. by Mr. Justice NARES, edited by THOMAS TOWNSEND BUCKNILL, of the Inner Temple, Barrister-at-Law.

"Law books never can die or remain long dead so long as Stevens and Haynes are willing to continue them or revive them when dead. It is certainly surprising to see with what facial accuracy

an old volume of Reports may be produced by these modern publishers, whose good taste is only equalled by their enterprise."—*Canada Law Journal*.

BROOKE'S NEW CASES WITH MARCH'S TRANSLATION.

In 8vo, 1873, price 4l. 4s., calf antique,

BROOKE'S (Sir Robert) New Cases in the time of Henry VIII., Edward VI., and Queen Mary, collected out of BROOKE'S Abridgement, and arranged under years, with a table, together with MARCH'S (John) *Translation of BROOKE'S New Cases* in the time of Henry VIII., Edward VI., and Queen Mary, collected out of BROOKE'S Abridgement, and reduced alphabetically under their proper heads and titles, with a table of the principal matters. In one handsome volume. 8vo. 1873.

"Both the original and the translation having long been very scarce, and the mispaging and other errors in March's translation making a new and corrected edition peculiarly desirable, Messrs.

Stevens and Haynes have reprinted the two books in one volume, uniform with the preceding volumes of the series of Early Reports."—*Canada Law Journal*.

KELYNGE'S (W.) REPORTS.

In 8vo, 1873, price 4l. 4s., calf antique,

KELYNGE'S (William) Reports of Cases in Chancery, the King's Bench, &c., from the 3rd to the 9th year of his late Majesty King George II., during which time Lord King was Chancellor, and the Lords Raymond and Hardwicke were Chief Justices of England. To which are added, seventy New Cases not in the First Edition. Third Edition. In one handsome volume. 8vo. 1873.

KELYNG'S (SIR JOHN) CROWN CASES.

In 8vo, 1873, price 4l. 4s., calf antique,

KELYNG'S (Sir J.) Reports of Divers Cases in Pleas of the Crown in the Reign of King Charles II., with Directions to Justices of the Peace, and others; to which are added, Three Modern Cases, viz., Armstrong and Lisle, the King and Plummer, the Queen and Mawgridge. Third Edition, containing several additional Cases never before printed, together with a TREATISE UPON THE LAW AND PROCEEDINGS IN CASES OF HIGH TREASON, first published in 1793. The whole carefully revised and edited by RICHARD LOVELAND LOVELAND, of the Inner Temple, Barrister-at-Law.

"We look upon this volume as one of the most important and valuable of the unique reprints of Messrs. Stevens and Haynes. Little do we know of the mines of legal wealth that lie buried in the old law books. But a careful examination, either of the reports or of the treatise embodied in the volume now before us, will give the reader some idea of the

good service rendered by Messrs. Stevens and Haynes to the profession. . . . Should occasion arise, the Crown prosecutor, as well as counsel for the prisoner, will find in this volume a complete *vade mecum* of the law of high treason and proceedings in relation thereto."—*Canada Law Journal*.

In one volume, 8vo, price 25s., cloth,

A CONCISE TREATISE ON
PRIVATE INTERNATIONAL JURISPRUDENCE,
BASED ON THE DECISIONS IN THE ENGLISH COURTS.

By JOHN ALDERSON FOOTE,

OF LINCOLN'S INN, BARRISTER-AT-LAW; CHANCELLOR'S LEGAL MEDALLIST AND SENIOR WHEWELL SCHOLAR
OF INTERNATIONAL LAW CAMBRIDGE UNIVERSITY, 1873; SENIOR STUDENT IN JURISPRUDENCE
AND ROMAN LAW, INNS OF COURT EXAMINATION, HILARY TERM, 1874.

"This work seems to us likely to prove of considerable use to all English lawyers who have to deal with questions of private international law. Since the publication of Mr. Westlake's valuable treatise, twenty years ago, the judicial decisions of English courts bearing upon different parts of this subject have greatly increased in number, and it is full time that these decisions should be examined, and that the conclusions to be deduced from them should be systematically set forth in a treatise. Moreover, Mr. Foote has done this well."—*Solicitors' Journal*.

"Mr. Foote has done his work very well, and the book will be useful to all who have to deal with the class of cases in which English law alone is not sufficient to settle the question."—*Saturday Review*, March 8, 1879.

"The author's object has been to reduce into order the mass of materials already accumulated in the shape of explanation and actual decision on the interesting matter of which he treats; and to construct a framework of private international law, not from the *dicta* of jurists so much as from judicial decisions in English Courts which have superseded them. And it is here, in compiling and arranging in a concise form this valuable material, that Mr. Foote's wide range of knowledge and legal acumen bear such good fruit. As a guide and assistant to the student of international law, the whole treatise will be invaluable: while a table of cases and a general index will enable him to find what he wants without trouble."—*Standard*.

"The recent decisions on points of international law (and there have been a large number since Westlake's publication) have been well stated. So far as we have observed, no case of any importance has been omitted, and the leading cases have been fully analysed. The author does not hesitate to criticise the grounds of a decision when these appear to him to conflict with the proper rule of law. Most of his criticisms seem to us very just. . . . On the whole, we can recommend Mr. Foote's treatise as a useful addition to our text-books, and we expect it will rapidly find its way into the hands of practising lawyers."—*The Journal of Jurisprudence and Scottish Law Magazine*.

"Mr. Foote has evidently borne closely in mind the needs of Students of Jurisprudence as well as those of the Practitioners. For both, the fact that his work is almost entirely one of Case-law will commend it as one useful alike in Chambers and in Court."—*Law Magazine and Review*.

"Mr. Foote's book will be useful to the student. . . . One of the best points of Mr. Foote's book is the 'Continuous Summary,' which occupies about thirty pages, and is divided into four parts—Persons, Property, Acts, and Procedure. Mr. Foote remarks that these summaries are not in any way intended as an attempt at codification. However that may be, they are a digest which reflects high credit on the author's assiduity and capacity. They are 'meant merely to guide the student;' but they will do much more than guide him. They will enable him to get such a grasp of the subject as will render the reading of the text easy and fruitful."—*Law Journal*.

"This book is well adapted to be used both as a text-book for students and a book of reference for practising barristers."—*Bar Examination Journal*.

"This is a book which supplies the want which has long been felt for a really good modern treatise on Private International Law adapted to the every-day requirements of the English Practitioner. The whole volume, although designed for the use of the practitioner, is so moderate in size—an octavo of 500 pages only—and the arrangement and development of the subject so well conceived and executed, that it will amply repay perusal by those whose immediate object may be not the actual decisions of a knotty point but the satisfactory disposal of an examination paper."—*Oxford and Cambridge Undergraduates' Journal*.

"Since the publication, some twenty years ago, of Mr. Westlake's Treatise, Mr. Foote's book is, in our opinion, the best work on private international law which has appeared in the English language. . . . The work is executed with much ability, and will doubtless be found of great value by all persons who have to consider questions on private international law."—*Athenæum*.

THE Law Magazine and Review,

AND

QUARTERLY DIGEST OF ALL REPORTED CASES.

Price FIVE SHILLINGS each Number.

No. CCXVIII. (Vol. 1, No. I, of the New QUARTERLY Series.) November, 1875.

No. CCXIX. (Vol. 1, 4th Series No. II.) February, 1876.

N.B.—These two Numbers are out of print.

No. CCXX. (Vol. 1, 4th Series No. III.) For May, 1876.

No. CCXXI. (Vol. 1, 4th Series No. IV.) For August, 1876.

Nos. CCXXII. to CCXXV. (Vol. 2, 4th Series Nos. V. to VIII.), November, 1876, to August, 1877.

Nos. CCXXVI. to CCXXIX. (Vol. 3, 4th Series Nos. IX. to XII.), November, 1877, to August, 1878.

Nos. CCXXX. to CCXXXIII. (Vol. 4, 4th Series Nos. XIII. to XVI.), November, 1878, to August, 1879.

Nos. CCXXXIV. to CCXXXVII. (Vol. 5, 4th Series Nos. XVII. to XX.), November, 1879, to August, 1880.

Nos. CCXXXVIII. to CCXLI. (Vol. 6, 4th Series Nos. XXI. to XXIV.), November, 1880, to August, 1881.

Nos. CCXLII. to CCXLV. (Vol. 7, 4th Series Nos. XXV. to XXVIII.), November, 1881, to August, 1882.

Nos. CCXLVI. to CCXLIX. (Vol. 8, 4th Series Nos. XXIX. to XXXII.), November, 1882, to August, 1883.

No. CCL. (Vol. 9, 4th Series No. XXXIII.), for November, 1883.

An Annual Subscription of 20s., paid in advance to the Publishers, will secure the receipt of the LAW MAGAZINE, free by post, within the United Kingdom, or for 24s. to the Colonies and Abroad.

Third Edition, in one vol., 8vo, price 32s., cloth,

A TREATISE ON HINDU LAW AND USAGE.

By JOHN D. MAYNE, of the Inner Temple, Barrister-at-Law, Author of "A Treatise on Damages," &c.

"A new work from the pen of so established an authority as Mr. Mayne cannot fail to be welcome to the legal profession. In his present volume the late Officiating Advocate-General at Madras has drawn upon the stores of his long experience in Southern India, and has produced a work of value alike to the practitioner at the Indian Bar, or at home, in appeal cases, and to the scientific jurist.

"To all who, whether as practitioners or administrators, or as students of the science of jurisprudence, desire a thoughtful and suggestive work of reference on Hindu Law and Usage, we heartily recommend the careful perusal of Mr. Mayne's valuable treatise."
—*Law Magazine and Review*.

In 8vo, 1877, price 15s., cloth,

A DIGEST OF HINDU LAW.

AS ADMINISTERED IN THE COURTS OF THE MADRAS PRESIDENCY.

ARRANGED AND ANNOTATED

By H. S. CUNNINGHAM, M.A., Advocate-General, Madras.

DUTCH LAW.

Vol. I., Royal 8vo, price 40s., cloth,

VAN LEEUWEN'S COMMENTARIES ON THE ROMAN-DUTCH

LAW. Revised and Edited with Notes in Two Volumes by C. W. DECKER, Advocate. Translated from the original Dutch by J. G. KOTZÉ, LL.B., of the Inner Temple, Barrister-at-Law, and Chief Justice of the Transvaal. With Facsimile Portrait of DECKER from the Edition of 1780.

* * Vol. II. is in course of preparation.

BUCHANAN (J.), Reports of Cases decided in the Supreme Court of the CAPE OF GOOD HOPE. 1868, 1869, 1870-73, and 74. Bound in Three Vols. Royal 8vo.
— 1875, 1876, 1879, etc.

MENZIES' (W.), Reports of Cases decided in the Supreme Court of the CAPE OF GOOD HOPE. Vol. I., Vol. II., Vol. III.

BUCHANAN (J.), Index and Digest of Cases decided in the Supreme Court of the CAPE OF GOOD HOPE, reported by the late Hon. WILLIAM MENZIES. Compiled by JAMES BUCHANAN, Advocate of the Supreme Court. In One Vol., royal 8vo.

In 8vo, 1878, cloth,

PRECEDENTS IN PLEADING: being Forms filed of Record in the Supreme Court of the Colony of the Cape of Good Hope. Collected and Arranged by JAMES BUCHANAN.

In Crown 8vo, price 31s. 6d., boards,

THE INTRODUCTION TO DUTCH JURISPRUDENCE OF

HUGO GROTIUS, with Notes by Simon van Groenwegen van der Made, and References to Van der Keesel's Theses and Schorer's Notes. Translated by A. F. S. MAASDORP, B.A., of the Inner Temple, Barrister-at-Law.

In 12mo, price 15s. *net*, boards,

SELECT THESES ON THE LAWS OF HOLLAND & ZEELAND.

Being a Commentary of Hugo Grotius' Introduction to Dutch Jurisprudence, and intended to supply certain defects therein, and to determine some of the more celebrated Controversies on the Law of Holland. By DIONYSIUS GODEFRIDUS VAN DER KESSEL, Advocate, and Professor of the Civil and Modern Laws in the Universities of Leyden. Translated from the original Latin by C. A. LORENZ, Lincoln's Inn, Barrister-at-Law. Second Edition, With a Biographical Notice of the Author by Professor J. DE WAL, of Leyden.

THE
Bar Examination Journal.

No. 39. Price 2s.

MICHAELMAS, 1883.

CONTENTS:—

SUBJECTS OF EXAMINATION.
EXAMINATION PAPERS, WITH ANSWERS.
REAL AND PERSONAL PROPERTY.
EQUITY.
COMMON LAW.
ROMAN LAW.
LIST OF SUCCESSFUL CANDIDATES.

EDITED BY

A. D. TYSSSEN, D.C.L., M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW; AND

W. D. EDWARDS, LL.B.,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

* * * *It is intended in future to publish a Number of the Journal after each Examination.*

Now published, in 8vo, price 18s. each, cloth,

THE BAR EXAMINATION JOURNAL, VOLS. IV. & V.

Containing the Examination Questions and Answers from Easter Term, 1878, to Hilary Term, 1880, and Easter Term, 1880, to Hilary Term, 1882, with List of Successful Candidates at each examination, Notes on the Law of Property, and a Synopsis of Recent Legislation of importance to Students, and other information.

By A. D. TYSSSEN AND W. D. EDWARDS, Barristers-at-Law.

Second Edition. In 8vo, price 6s., cloth,

A SUMMARY OF JOINT STOCK COMPANIES' LAW.

By T. EUSTACE SMITH,

OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"The author of this hand-book tells us that, when an articulated student reading for the final examination, he felt the want of such a work as that before us, wherein could be found the main principles of law relating to joint-stock companies . . . Law students may well read it; for Mr. Smith has very wisely been at the pains of giving his authority for all his statements of the law or of practice, as applied to joint-stock company business usually transacted in solicitor's chambers. In fact, Mr. Smith has by his little book offered a fresh inducement to students to make themselves—at all events, to some extent—acquainted with company law as a separate branch of study."—*Law Times*.

"These pages give, in the words of the Preface, 'as briefly and concisely as possible, a general view both of the principles and practice of the law affecting companies.' The work is excellently printed, and authorities are cited; but in no case is the very language of the statutes copied. The plan is good, and shows both grasp and neatness, and, both amongst students and laymen, Mr. Smith's book ought to meet a ready sale."—*Law Journal*.

"The book is one from which we have derived a large amount of valuable information, and we can heartily and conscientiously recommend it to our readers."—*Oxford and Cambridge Undergraduates' Journal*.

In 8vo, Fifth Edition, price 9s., cloth,

THE MARRIED WOMEN'S PROPERTY ACTS; 1870, 1874, and 1882,

WITH COPIOUS AND EXPLANATORY NOTES, AND AN APPENDIX OF THE ACTS
RELATING TO MARRIED WOMEN.

By S. WORTHINGTON BROMFIELD, M.A., Christ Church, Oxon., and the Inner Temple, Barrister-at-Law. Being the Fifth Edition of The Married Women's Property Acts. By the late J. R. GRIFFITHS, B.A., Oxon., of Lincoln's Inn, Barrister-at-Law.

"Upon the whole, we are of opinion that this is the best work upon the subject which has been issued since the passing of the recent Act. Its position as a well-established manual of acknowledged worth gives it at starting a considerable advantage over new books; and this advantage has been well maintained by the intelligent treatment of the Editor."—*Solicitors' Journal*.

"The notes are full, but anything rather than tedious reading, and the law contained in them is good, and verified by reported cases. . . . A distinct feature of the work is its copious index, practically a summary of the marginal headings of the various paragraphs in the body of the text. This book is worthy of all success."—*Law Magazine*.

In 8vo, price 12s., cloth,

THE LAW OF NEGLIGENCE.

SECOND EDITION.

By ROBERT CAMPBELL, of Lincoln's Inn, Barrister-at-Law, and Advocate
of the Scotch Bar.

"No less an authority than the late Mr. Justice Willes, in his judgment in *Offenheim v. White Lion Hotel Co.*, characterised Mr. Campbell's 'Law of Negligence' as a 'very good book;' and since very good books are by no means plentiful, when compared with the numbers of indifferent ones which annually issue from the press, we think the profession will be thankful to the author of this

new edition brought down to date. It is indeed an able and scholarly treatise on a somewhat difficult branch of law, in the treatment of which the author's knowledge of Roman and Scotch Jurisprudence has stood him in good stead. We confidently recommend it alike to the student and the practitioner."—*Law Magazine*.

In royal 8vo, price 28s., cloth,

AN INDEX TO TEN THOUSAND PRECEDENTS IN CONVEYANCING, AND TO COMMON AND COMMERCIAL

FORMS. Arranged in Alphabetical order with Subdivisions of an Analytical Nature; together with an Appendix containing an Abstract of the Stamp Act, 1870, with a Schedule of Duties; the Regulations relative to, and the Stamp Duties payable on, Probates of Wills, Letters of Administration, Legacies, and Successions. By WALTER ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law.

BIBLIOTHECA LEGUM.

In 12mo (nearly 400 pages), price 2s., cloth,

A CATALOGUE OF LAW BOOKS. Including all the Reports in the various Courts of England, Scotland, and Ireland; with a Supplement to December, 1882. By HENRY G. STEVENS and ROBERT W. HAYNES, Law Publishers.

In small 4to, price 2s., cloth, beautifully printed, with a large margin, for the
special use of Librarians,

A CATALOGUE OF THE REPORTS IN THE VARIOUS COURTS OF THE UNITED KINGDOM OF GREAT BRITAIN AND IRELAND. ARRANGED BOTH IN ALPHA- BETICAL & CHRONOLOGICAL ORDER. By STEVENS & HAYNES, Law Publishers.

Just published, in 8vo, price 12s., cloth,

CHAPTERS ON THE LAW RELATING TO THE COLONIES.

To which is appended a TOPICAL INDEX of CASES DECIDED in the PRIVY COUNCIL on Appeal from the Colonies, the Channel Islands and the Isle of Man, reported in Acton, Knapp, Moore, the Law Journal Reports, and the Law Reports, to July, 1882.

By CHARLES JAMES TARRING,
OF THE INNER TEMPLE, ESQ., BARRISTER-AT-LAW.

CONTENTS.

TABLE OF CASES CITED.

TABLE OF STATUTES CITED.

Introductory.—Definition of a Colony.

Chapter I.—The laws to which the Colonies are subject.

Chapter II.—The Executive.

Section 1.—The Governor.

Section 2.—The Executive Council.

Chapter III.—The Legislative power.

Section 1.—Crown Colonies.

Section 2.—Privileges and powers of colonial Legislative Assemblies.

Chapter IV.—The Judiciary and Bar.

Chapter V.—Appeals from the Colonies.

Chapter VI.—Section 1.—Imperial Statutes relating to the Colonies in general.

Section 2.—Imperial Statutes relating to particular Colonies.

TOPICAL INDEX OF CASES.

INDEX OF TOPICS OF ENGLISH LAW DEALT WITH IN THE CASES.

INDEX OF NAMES OF CASES.

GENERAL INDEX.

In 8vo, price 10s. cloth,

THE TAXATION OF COSTS IN THE CROWN OFFICE.

COMPRISING A COLLECTION OF

BILLS OF COSTS IN THE VARIOUS MATTERS TAXABLE IN THAT OFFICE;

INCLUDING

COSTS UPON the PROSECUTION of FRAUDULENT BANKRUPTS,
AND ON APPEALS FROM INFERIOR COURTS;

TOGETHER WITH

A TABLE OF COURT FEES,

AND A SCALE OF COSTS USUALLY ALLOWED TO SOLICITORS, ON THE TAXATION OF COSTS ON THE CROWN SIDE OF THE QUEEN'S BENCH DIVISION OF THE HIGH COURT OF JUSTICE.

By FREDK. H. SHORT,

CHIEF CLERK IN THE CROWN OFFICE.

"This is decidedly a useful work on the subject of those costs which are liable to be taxed before the Queen's Coroner and Attorney (for which latter name that of 'Solicitor' might now well be substituted), or before the master of the Crown Office; in fact, such a book is almost indispensable when preparing costs for taxation in the Crown Office, or when taxing an opponent's costs. Country solicitors will find the scale relating to bankruptcy prosecutions of especial use, as such costs are taxed in the Crown Office. The 'general observations' constitute a useful feature in this manual."—*Law Times*.

"This book contains a collection of bills of costs in the various matters taxable in the Crown Office. When we point out that the only scale of costs available for the use of the general body of solicitors is that published in Mr. Corner's book on 'Crown Practice' in 1844, we have said quite enough to prove the utility of the work before us.

"In them Mr. Short deals with 'Perusals,' 'Copies for Use,' 'Affidavits,' 'Agency,' 'Correspondence,' 'Close Copies,' 'Counsel,' 'Affidavit of Increase,' and kindred matters; and adds some useful remarks on taxation of 'Costs in Bankruptcy Prosecutions,' 'Quo Warranto,' 'Mandamus,' 'Indictments,' and 'Rules.'

"We have rarely seen a work of this character better executed, and we feel sure that it will be thoroughly appreciated."—*Law Journal*.

"The recent revision of the old scale of costs in the Crown Office renders the appearance of this work particularly opportune, and it cannot fail to be welcomed by practitioners. Mr. Short gives, in the first place, a scale of costs usually allowed to solicitors on the taxation of costs in the Crown Office, and then bills of costs in various matters. These are well arranged and clearly printed."—*Solicitors' Journal*.

In one volume, 8vo, price 16s., cloth,
A CONCISE TREATISE ON THE

STATUTE LAW OF THE LIMITATIONS OF ACTIONS.

With an Appendix of Statutes, Copious References to English, Irish, and American Cases, and to the French Code, and a Copious Index.

By HENRY THOMAS BANNING, M.A.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW.

"In this work Mr. Banning has grappled with one of the most perplexing branches of our statute law. The law, as laid down by the judicial decisions on the various Statutes of Limitations, is given in thirty-three short chapters under as many headings, and each chapter treats of a sub-division of one of the main branches of the subject; thus we have ten chapters devoted to real property. This arrangement entails a certain amount of repetition, but is not without its advantages, as the subject of each chapter is tolerably exhaustively treated of within the limits of a few pages. We think that in this respect the author has exercised a wise discretion. So far as we have tested the cases cited, the effect of the numerous decisions appears to be accurately given—indeed, the author has, as we are informed in the preface, 'so far as is consistent with due brevity, employed the *ipsissima verba* of the tribunal;' and the cases are brought down to a very recent date. . . . The substance of the book is satisfactory; and we may commend it both to students and practitioners."—*Solicitors' Journal*.

"Mr. Banning's 'Concise Treatise' justifies its title. He brings into a convenient compass a general view of the law as to the limitation of actions as it exists under numerous statutes, and a digest of the principal reported cases relating to the subject which have arisen in the English and American courts."—*Saturday Review*.

"Mr. Banning has adhered to the plan of printing the Acts in an appendix, and making his book a running treatise on the case-law thereon. The cases have evidently been investigated with care and digested with clearness and intellectuality."—*Law Journal*.

In 8vo, price 8s., cloth,

The TRADE MARKS REGISTRATION ACT, 1875,

And the Rules thereunder; THE MERCHANDISE MARKS ACT, 1862, with an Introduction containing a SUMMARY OF THE LAW OF TRADE MARKS, together with practical Notes and Instructions, and a copious INDEX. By EDWARD MORTON DANIEL, of Lincoln's Inn, Barrister-at-Law.

"The last of the works on this subject, that by Mr. Daniel, appears to have been very carefully done. Mr. Daniel's book is a satisfactory and useful guide."—*The Engineer*.

"This treatise contains, within moderate compass, the whole of the law, as far as practically required, on the subject of trade marks. The publication is opportune, the subject being one which must nearly concern a considerable portion of the public, and it may be recommended to all who desire to take advantage of the protection afforded by registration under the new legislation. It is practical, and seems to be complete in every respect. The volume is well printed and neatly got up."—*Law Times*.

In 8vo, price 1s., sewed,

AN ESSAY ON THE

ABOLITION OF CAPITAL PUNISHMENT.

Embracing more particularly an Enunciation and Analysis of the Principles of Law as applicable to Criminals of the Highest Degree of Guilt.

By WALTER ARTHUR COPINGER,

OF THE MIDDLE TEMPLE, ESQ., BARRISTER-AT-LAW;

Author of "The Law of Copyright in Works of Literature and Art," "Index to Precedents in Conveyancing," "On the Custody and Production of Title Deeds."

"We can recommend Mr. Copinger's book as containing the fullest collection we have seen of facts and quotations from eminent jurists, statistics, and general information bearing on the subject of capital punishments."—*Manchester Courier*.

In 8vo, price 31s. 6d., cloth,

THE INDIAN CONTRACT ACT, No. IX., of 1872.

TOGETHER

WITH AN INTRODUCTION AND EXPLANATORY NOTES, TABLE OF CONTENTS, APPENDIX, AND INDEX.

By H. S. CUNNINGHAM AND H. H. SHEPHERD,

BARRISTERS-AT-LAW.

Second Edition, in 8vo, price 8s., cloth,

THE PARTITION ACTS, 1868 & 1876,

A MANUAL OF THE LAW OF PARTITION AND OF SALE
IN LIEU OF PARTITION.

With the Decided Cases, and an Appendix containing Judgments and Orders.

By W. GREGORY WALKER,

OF LINCOLN'S INN, BARRISTER-AT-LAW, B.A., AUTHOR OF "A COMPENDIUM OF THE LAW OF EXECUTORS
AND ADMINISTRATORS."

"This is a very good manual—practical, clearly written, and complete. The subject lends itself well to the mode of treatment adopted by Mr. Walker, and in his notes to the various sections he has carefully brought together the cases and discussed the difficulties arising upon the language of the different provisions."—*Solicitors' Journal*.

"The main body of the work is concerned only with the so-called Partition Acts, which are really Acts enabling the Court in certain cases to substitute a sale for a partition. What these cases are is very well summed up or set out in the present edition of this book, which is well up to date. The

work is supplemented by a very useful selection of precedents of pleadings and orders."—*Law Journal*.

"This is a very painstaking and praiseworthy little treatise. That such a work has now been published needs, in fact, only to be announced; for, meeting as it does an undoubted requirement, it is sure to secure a place in the library of every equity practitioner. . . . We are gratified to be able to add our assurance that the practitioner will find that his confidence has not been misplaced, and that Mr. Walker's manual, compact and inexpensive as it is, is equally exhaustive and valuable."—*Irish Law Times*.

In 8vo, price 21s., cloth,

A TREATISE ON THE LAW AND PRACTICE RELATING TO INFANTS.

By ARCHIBALD H. SIMPSON, M.A.,

OF LINCOLN'S INN, ESQ., BARRISTER-AT-LAW, AND FELLOW OF CHRIST'S COLLEGE, CAMBRIDGE.

"Mr. Simpson's book comprises the whole of the law relating to infants, both as regards their persons and their property, and we have not observed any very important omissions. The author has evidently expended much trouble and care upon his work, and has brought together, in a concise and convenient form, the law upon the subject down to the present time."—*Solicitors' Journal*.

"Its law is unimpeachable. We have detected no errors, and whilst the work might have been done more scientifically, it is, beyond all question, a compendium of sound legal principles."—*Law Times*.

"Mr. Simpson has arranged the whole of the Law relating to Infants with much fullness of detail, and yet in comparatively little space. The result is due mainly to the businesslike condensation of his style. Fullness, however, has by no means been sacrificed to brevity, and, so far as we have been

able to test it, the work omits no point of any importance, from the earliest cases to the last. In the essential qualities of clearness, completeness, and orderly arrangement it leaves nothing to be desired.

"Lawyers in doubt on any point of law or practice will find the information they require, if it can be found at all, in Mr. Simpson's book, and a writer of whom this can be said may congratulate himself on having achieved a considerable success."—*Law Magazine*, February, 1876.

"The reputation of 'Simpson on Infants' is now too perfectly established to need any encomiums on our part: and we can only say that, as the result of our own experience, we have invariably found this work an exhaustive and trustworthy repository of information on every question connected with the law and practice relating to its subject."—*Irish Law Times*, July 7, 1877.

In 8vo, price 8s., cloth,

THE LAW CONCERNING THE REGISTRATION OF BIRTHS AND DEATHS

IN ENGLAND AND WALES, AND AT SEA.

Being the whole Statute Law upon the subject; together with a list of Registration Fees and Charges. Edited, with Copious Explanatory Notes and References, and an Elaborate Index, by ARTHUR JOHN FLAXMAN, of the Middle Temple, Barrister-at-Law.

"Mr. Flaxman's unpretentious but admirable little book makes the duties of all parties under the Act abundantly clear. . . . Lawyers will find the book not only handy, but also instructive and suggestive. To registrars, and all persons engaged in the execution of the law, the book will be invaluable. The index occupies thirty-five pages, and is so full that information on a minute point can be obtained without trouble. It is an index that must have cost the author much thought and time. The statements of what is to be done, who may do it, and what must not be done, are so clear that it is well-nigh impossible for any one who consults the book to err. Those who use Flaxman's 'Regis-

tration of Births and Deaths' will admit that our laudatory criticism is thoroughly merited."—*Law Journal*.

"Mr. Arthur John Flaxman, barrister-at-law, of the Middle Temple, has published a small work on 'The Law concerning the Registration of Births and Deaths in England and Wales, and at Sea.' Mr. Flaxman has pursued the only possible plan, giving the statutes and references to cases. The remarkable feature is the index, which fills no less than 35 out of a total of 112 pages. The index alone would be extremely useful, and is worth the money asked for the work."—*Law Times*.

THE LAW OF EXTRADITION.

Second Edition, in 8vo, price 18s., cloth,

A TREATISE UPON

THE LAW OF EXTRADITION,

WITH THE

CONVENTIONS UPON THE SUBJECT EXISTING BETWEEN
ENGLAND AND FOREIGN NATIONS,

AND THE CASES DECIDED THEREON.

By EDWARD CLARKE,

OF LINCOLN'S INN, Q.C.

"Mr. Clarke's accurate and sensible book is the best authority to which the English reader can turn upon the subject of Extradition."—*Saturday Review*.

"The opinion we expressed of the merits of this work when it first appeared has been fully justified by the reputation it has gained. This new edition, embodying and explaining the recent legislation on extradition, is likely to sustain that reputation. . . . There are other points we had marked for comment, but we must content ourselves with heartily commending this new edition to the attention of the profession. It is seldom we come across a book possessing so much interest to the general reader and at the same time furnishing so useful a guide to the lawyer."—*Solicitors' Journal*.

"The appearance of a second edition of this treatise does not surprise us. It is a useful book, well arranged and well written. A student who wants to learn the principles and practice of the law of extradition will be greatly helped by Mr. Clarke. Lawyers who have extradition business will find this volume an excellent book of reference. Magistrates who have to administer the extradition law will be greatly assisted by a careful perusal of 'Clarke upon Extradition.' This may be called a warm commendation, but those who have read the book will not say it is unmerited. We have so often to expose the false pretenders to legal authorship that it is a pleasure to meet with a volume that is the useful and unpretending result of honest work. Besides the Appendix, which contains the extradition conventions of this country since 1843, we have eight chapters. The first is 'Upon the Duty of Extradition'; the second on the 'Early Treaties and Cases'; the others on the law in the United States, Canada, England, and France, and the practice in those countries."—*Law Journal*.

"One of the most interesting and valuable contributions to legal literature which it has been our province to notice for a long time, is 'Clarke's Treatise on the Law of Extradition.' . . . Mr. Clarke's work comprises chapters upon the Duty of Extradition; Early Treaties and Cases; History of the Law in the United States, in Canada, in England, in France, &c., with an Appendix containing the Conventions existing between England and Foreign Nations, and the cases decided thereon. . . . The work is ably prepared throughout, and should form a part of the library of every lawyer interested in great Constitutional or International Questions."—*Albany Law Journal*.

THE TIMES of September 7, 1874, in a long article upon "Extradition Treaties," makes considerable use of this work, and writes of it as "*Mr. Clarke's useful Work on Extradition.*"

In 8vo, 1876, price 8s., cloth,

THE PRACTICE AND PROCEDURE IN APPEALS
FROM INDIA TO THE PRIVY COUNCIL.

By E. B. MICHELL AND R. B. MICHELL,

BARRISTERS-AT-LAW.

"A useful manual arranging the practice in convenient order, and giving the rules in force in several Courts. It will be a decided acquisition to those engaged in Appeals from India."—*Law Times*.

PRACTICE OF CONVEYANCING.

In 8vo, price 2s. 6d., cloth,

TABLES OF STAMP DUTIES
FROM 1815 TO THE PRESENT TIME.

By WALTER ARTHUR COPINGER,

OF THE MIDDLE TEMPLE, ESQUIRE, BARRISTER-AT-LAW: AUTHOR OF "THE
LAW OF COPYRIGHT IN WORKS OF LITERATURE AND ART," "INDEX
TO PRECEDENTS IN CONVEYANCING," "TITLE DEEDS," &c.

"Conveyancers owe Mr. Copinger a debt of gratitude for his valuable Index to Precedents in Conveyancing: and we think the little book now before us will add to their obligations. Mr. Copinger gives, first of all, an abstract of the Stamp Act, 1870, with the special regulations affecting conveyances, mortgages, and settlements in full. He then presents in a tabular form the *ad valorem* stamp duties on conveyances, mortgages, and settlements, payable in England from the 1st of September, 1815, to the 10th of October, 1850, and then tables of *ad valorem* duties payable on the three classes of instruments since the last-mentioned date, and at the present time: arranged very clearly in columns. We cannot pretend to have checked

the figures, but those we have looked at are correct: and we think this little book ought to find its way into a good many chambers and offices."—*Solicitors' Journal*.

"This book, or at least one containing the same amount of valuable and well-arranged information, should find a place in every Solicitor's office. It is of especial value when examining the abstract of a large number of old title deeds."—*Law Times*.

"His *Tables of Stamp Duties, from 1815 to 1878*, have already been tested in Chambers, and being now published, will materially lighten the labours of the profession in a tedious department, yet one requiring great care."—*Law Magazine and Review*.

In one volume, 8vo, price 14s., cloth,

TITLE DEEDS:

THEIR CUSTODY, INSPECTION, AND PRODUCTION, AT LAW, IN
EQUITY, AND IN MATTERS OF CONVEYANCING,Including Covenants for the Production of Deeds and Attested Copies; with an Appendix
of Precedents, the Vendor and Purchaser Act, 1874, &c., &c., &c. By WALTER
ARTHUR COPINGER, of the Middle Temple, Barrister-at-Law; Author of "The
Law of Copyright" and "Index to Precedents in Conveyancing."

"In dealing with 'documentary evidence at law and in equity and in matters of conveyancing, including covenants for the production of deeds and attested copies,' Mr. Copinger has shown discrimination, for it is a branch of the general subject of evidence which is very susceptible of independent treatment. We are glad, therefore, to be able to approve both of the design and the manner in which it has been executed.

"The literary execution of the work is good enough to invite quotation, but the volume is not

large and we content ourselves with recommending it to the profession."—*Law Times*.

"A really good treatise on this subject must be essential to the lawyer: and this is what we have here. Mr. Copinger has supplied a much-felt want, by the compilation of this volume. We have not space to go into the details of the book; it appears well arranged, clearly written, and fully elaborated. With these few remarks we recommend this volume to our readers."—*Law Journal*.

In 8vo, Second Edition, considerably enlarged, price 30s., cloth

THE LAW OF COPYRIGHT

In Works of Literature and Art; including that of the Drama, Music, Engraving,
Sculpture, Painting, Photography, and Ornamental and Useful Designs; together
with International and Foreign Copyright, with the Statutes Relating thereto, and
References to the English and American Decisions. By WALTER ARTHUR
COPINGER, of the Middle Temple, Barrister-at-Law.

"Mr. Copinger's book is very comprehensive, dealing with every branch of his subject, and even extending to copyright in foreign countries. So far as we have examined, we have found all the recent authorities noted up with scrupulous care, and there is an unusually good index. There are merits which will, doubtless, lead to the placing of this edition on the shelves of the members of the

profession whose business is concerned with copyright; and deservedly, for the book is one of considerable value."—*Solicitors' Journal*.

"Meanwhile we recommend Mr. Copinger's volume as a clear and convenient work of reference on the many knotty points connected with the existing Law of Copyright, national and international."—*Notes and Queries*.

Second Edition, in One large Volume, 8vo, price 42s., cloth,

A MAGISTERIAL AND POLICE GUIDE :

BEING THE STATUTE LAW,

INCLUDING THE SESSION 43 VICT. 1880.

WITH NOTES AND REFERENCES TO THE DECIDED CASES,

RELATING TO THE

PROCEDURE, JURISDICTION, AND DUTIES OF MAGISTRATES
AND POLICE AUTHORITIES,

IN THE METROPOLIS AND IN THE COUNTRY.

With an Introduction showing the General Procedure before Magistrates both in Indictable and Summary Matters, as altered by the Summary Jurisdiction Act, 1879, together with the Rules under the said Act.

By HENRY C. GREENWOOD,

STIPENDIARY MAGISTRATE FOR THE DISTRICT OF THE STAFFORDSHIRE POTTERIES; AND

TEMPLE C. MARTIN,

CHIEF CLERK OF THE LAMBETH POLICE COURT.

"A second edition has appeared of Messrs. Greenwood and Martin's valuable and comprehensive magisterial and police Guide, a book which Justices of the peace should take care to include in their Libraries."—*Saturday Review*.

"Hence it is that we rarely light upon a work which commands our confidence, not merely by its research, but also by its grasp of the subject of which it treats. The volume before us is one of the happy few of this latter class, and it is on this account that the public favour will certainly wait upon it. We are moreover convinced that no effort has been spared by its authors, to render it a thoroughly efficient and trustworthy guide."—*Law Journal*.

"Magistrates will find a valuable handbook in Messrs. Greenwood and Martin's 'Magisterial and Police Guide,' of which a fresh Edition has just been published."—*The Times*.

"A very valuable introduction, treating of proceedings before Magistrates, and largely of the Summary Jurisdiction Act, is in itself a treatise which will repay perusal. We expressed our high opinion of the Guide when it first appeared, and the favourable impression then produced is increased by our examination of this Second Edition."—*Law Times*.

"For the form of the work we have nothing but commendation. We may say we have here our ideal law book. It may be said to omit nothing which it ought to contain."—*Law Times*.

"This handsome volume aims at presenting a comprehensive magisterial handbook for the whole of England. The mode of arrangement seems to us excellent, and is well carried out."—*Solicitors' Journal*.

"The *Magisterial and Police Guide*, by Mr. Henry Greenwood and Mr. Temple Martin, is a model work in its conciseness, and, so far as we have been able to test it, in completeness and accuracy. It ought to be in the hands of all who, as magistrates or otherwise, have authority in matters of police."—*Daily News*.

"This work is eminently practical, and supplies a real want. It plainly and concisely states the law on all points upon which Magistrates are called upon to adjudicate, systematically arranged, so as to be easy of reference. It ought to find a place on every Justice's table, and we cannot but think that its usefulness will speedily ensure for it as large a sale as its merits deserve."—*Midland Counties Herald*.

"The exceedingly arduous task of collecting together all the enactments on the subject has been ably and efficiently performed, and the arrangement is so methodical and precise that one is able to lay a finger on a Section of an Act almost in a moment. It is wonderful what a mass of information is comprised in so comparatively small a space. We have much pleasure in recommending the volume not only to our professional, but also to our general readers; nothing can be more useful to the public than an acquaintance with the outlines of magisterial jurisdiction and procedure."—*Sheffield Post*.

Now published, in crown 8vo, price 4s., cloth,

A HANDBOOK OF THE
LAW OF PARLIAMENTARY REGISTRATION.
WITH AN APPENDIX OF STATUTES AND FULL INDEX.

By J. R. SEAGER, REGISTRATION AGENT.

In 8vo, price 5s., cloth, post free,

THE LAW OF
PROMOTERS OF PUBLIC COMPANIES.

By NEWMAN WATTS,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

"Some recent cases in our law courts, which at the time attracted much public notice, have demonstrated the want of some clear and concise exposition of the powers and liabilities of promoters, and this task has been ably performed by Mr. Newman Watts."—*Investor's Guardian*.

"Mr. Watts has brought together all the leading decisions relating to promoters and directors, and has arranged the information in a very satisfactory manner, so as to readily show the rights of different parties and the steps which can be legally taken by promoters to further interests of new companies."—*Daily Chronicle*.

In One Vol., 8vo, price 12s., cloth,

A COMPENDIUM OF ROMAN LAW,
Founded on the Institutes of Justinian;

TOGETHER WITH

EXAMINATION QUESTIONS

SET IN THE UNIVERSITY AND BAR EXAMINATIONS
(WITH SOLUTIONS),

AND DEFINITIONS OF LEADING TERMS IN THE WORDS
OF THE PRINCIPAL AUTHORITIES.

By GORDON CAMPBELL,

Of the Inner Temple, M.A., late Scholar of Exeter College, Oxford; M.A. Trinity College, Cambridge; Author of "An Analysis of Austin's Jurisprudence, or the Philosophy of Positive Law."

"Mr. Campbell, in producing a compendium of the Roman law, has gone to the best English works already existing on the subject, and has made excellent use of the materials found in them. The volume is especially intended for the use of students

who have to pass an examination in Roman law, and its arrangement with a view to this end appears very good. The existence of text-books such as this should do much to prevent the evil system of cramming."—*Saturday Review*.

In 8vo, price 7s. 6d., cloth,

TITLES TO MINES IN THE UNITED STATES,

WITH THE

STATUTES AND REFERENCES TO THE DECISIONS
OF THE COURTS RELATING THERETO.

By W. A. HARRIS, B.A., OXON.,

OF LINCOLN'S INN, BARRISTER-AT-LAW; AND OF THE AMERICAN BAR.

INDEX

TO THE NAMES OF AUTHORS AND EDITORS OF WORKS ENUMERATED
IN THIS CATALOGUE.

- ALDRED (P. F.), page 21.
 ARGLES (N.), 32.
 BALDWIN (E. T.), 15.
 BANNING (H. T.), 42.
 BARTON (G. B.), 18.
 BELLEWE (R.), 34.
 BRAITHWAITE (T. W.), 18.
 BRICE (SEWARD), 9, 16.
 BROMFIELD (S. W.), 40.
 BROOKE (SIR R.), 35.
 BROWN (ARCHIBALD), 20, 22, 26, 33.
 BROWNE (J. H. BALFOUR), 19.
 BUCHANAN, (J.), 38.
 BUCKLEY (H. B.), 17.
 BUCKNILL (T. T.), 34, 35.
 BUSHBY (H. J.), 33.
 CAMPBELL (GORDON), 47.
 CAMPBELL (ROBERT), 9, 40.
 CHALMERS (M. D.), 10.
 CLARKE (EDWARD), 44.
 COGHIAN (W. M.), 28.
 COOKE (SIR G.), 35.
 COOKE (HUGH), 10.
 COPINGER (W. A.), 40, 42, 45.
 CORNER (R. J.), 10.
 CUNNINGHAM (H. S.), 38, 42.
 CUNNINGHAM (JOHN), 7.
 CUNNINGHAM (T.), 34.
 DANIEL (E. M.), 42.
 DEANE (H. C.), 23.
 DE WAL (J.), 38.
 DOUTRE (J.), 18.
 EDWARDS (W. D.), 39.
 ELGOOD (E. J.), 18.
 EMDEN (A.), 8.
 EVANS (G.), 32.
 FINLASON (W. F.), 32.
 FLAXMAN (A. J.), 43.
 FOOTE (J. ALDERSON), 36.
 FORSYTH (W.), 14.
 GIBBS (F. W.), 10.
 GODEFROI (H.), 14.
 GREENWOOD (H. C.), 46.
 GRIFFITH (J. R.), 40.
 GRIFFITH (W. DOWNES), 6.
 GROTIUS (HUGO), 38.
 HALL (R. G.), 30.
 HANSON (A.), 10.
 HARDCASTLE (H.), 9, 33.
 HARRIS (SEYMOUR F.), 20, 27.
 HARRIS (W. A.), 47.
 HARRISON (J. C.), 23.
 HARWOOD (R. G.), 10.
 HAZLITT (W.), 29.
 HIGGINS (C.), 12, 30.
 HOUSTON (J.), 32.
 INDERMAUR (JOHN), page 24, 25, 28.
 JONES (E.), 14.
 JOYCE (W.), 11.
 KAY (JOSEPH), 17.
 KELKE (W. H.), 6.
 KELYNG (SIR J.), 35.
 KELYNGE (W.), 35.
 KOTZÉ (J. G.), 38.
 LLOYD (EYRE), 13.
 LOCKE (J.), 32.
 LORENZ (C. A.), 38.
 LOVELAND (R. L.), 6, 30, 34, 35
 MAASDORP (A. F. S.), 38.
 MARCH (JOHN), 35.
 MARSH (THOMAS), 21.
 MARTIN (TEMPLE C.), 46
 MATTINSON (M. W.), 7.
 MAY (H. W.), 29.
 MAYNE (JOHN D.), 31, 38.
 MENZIES (W.), 38.
 MICHELL (E. B.), 44.
 MORIARTY, 14.
 O'MALLEY (E. L.), 33.
 PEILE (C. J.), 7.
 PEMBERTON (L. L.), 32.
 REILLY (F. S.), 29.
 RINGWOOD (R.), 15, 29.
 ROBINSON (W. G.), 32.
 SAVIGNY (F. C. VON), 20.
 SEAGER (J. R.), 47.
 SHORT (F. H.), 10, 41.
 SHORTT (JOHN), 14.
 SHOWER (SIR B.), 34.
 SIMMONS (F.), 6.
 SIMPSON (A. H.), 43.
 SMITH (EUSTACE), 23, 39.
 SMITH (F. J.), 6.
 SMITH (LUMLEY), 31.
 SNELL (E. H. T.), 22.
 TARRANT (H. J.), 14.
 TARRING (C. J.), 26, 41.
 TASWELL-LANGMEAD, 21.
 THOMAS (ERNEST C.), 28.
 TYSSEN (A. D.), 39.
 VAN DER KEESEL (D. G.), 38.
 VAN LEEUWEN, 38.
 WAITE (W. T.), 22.
 WALKER (W. G.), 6, 18, 43.
 WATTS (C. N.), 47.
 WHITEFORD (F. M.), 20.
 WILLIAMS (S. E.), 7.

STEVENS AND HAYNES' LAW PUBLICATIONS

New series, fourth edition, small 8vo, paper 22s., cloth.

BUCKLEY ON THE COMPANIES ACTS. Fourth Edition.

By the author, A Treatise on the Law of Joint Stock Companies, containing the Statutes, Rules, and Forms. By H. GURNEY BURNETT, M.A., of Lincoln's Inn, Barrister at Law, Late Fellow of Trinity College, Cambridge.

Two vols., in royal 8vo, price 50s.

QUARTER SESSIONS PRACTICE. A Year's Manual of General

Practise in the Queen's Bench, Common Pleas, and Exchequer. By FRANKLIN JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

One vol., in two parts, 8vo, price 12s., cloth.

CHAPTERS ON THE LAW RELATING TO

WILLS. This is a treatise on Wills as they are made in England, Scotland, and Ireland, and contains a full and complete account of the law relating to the same. By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

ANALYTICAL TABLES OF THE LAW OF E

STATEMENTS. These are the only ones of the kind published in England, and are the only ones of the kind published in any other country. They are the only ones of the kind published in any other country. By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

TITLE DEEDS: Their Contents and Construction, and of other

important matters relating to the same. By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark. With an Appendix of Documents, the Forms and Examples. By W. A. GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

A NEW LAW DICTIONARY, AND INSTITUTE OF THE

WOMAN. By W. A. GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark. With an Appendix of Documents, the Forms and Examples. By W. A. GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

TABLES OF STAMP DUTIES FROM 1815 TO THE

PRESENT. By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark. With an Appendix of Documents, the Forms and Examples. By W. A. GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

THE PARTITION ACTS, 1868 & 1873. A Manual of the

Law of Partition, and of the Rights of the Parties to the same. By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

PRINCIPLES OF THE COMMON LAW. 10th Edition, 1884.

By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

THE LAW OF NEGLIGENCE. 10th Edition, 1884.

By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

QUESTIONS OF THE LAW OF CONTRACT. 10th Edition, 1884.

By the author, FRANK JAMES GURNEY, of the Middle Temple, Barrister at Law, and Recorder of Newark.

By mail has been sent 10s. 6d.

